

BRYAN HEBERT
CONFIDENTIAL TRANSCRIPT

6/17/2014

1 (Pages 1 to 4)

<p style="text-align: right;">1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 CORPUS CHRISTI DIVISION 4 MARC VEASEY, et al.,) 5 Plaintiff,) 6 VS.) CIVIL ACTION NUMBER: 7 RICK PERRY, et al.,) 2:13-CV-193 (NGR) 8 Defendants.) 9 UNITED STATES OF AMERICA,) 10 Plaintiff,) 11 VS.) CIVIL ACTION NUMBER: 12 TEXAS LEAGUE OF YOUNG VOTERS) 2:13-CV-263 (NGR) 13 EDUCATION FUND, et al.,) 14 Plaintiff-Intervenors,) 15 TEXAS ASSOCIATION OF HISPANIC) 16 COUNTY JUDGES AND COUNTY) 17 COMMISSIONERS, et al.,) 18 Plaintiff-Intervenors,) 19 VS.) 20 STATE OF TEXAS, et al.,) 21 Defendants.) 22 TEXAS STATE CONFERENCE OF) 23 NAACP BRANCHES, et al.,) 24 Plaintiffs,) CIVIL ACTION NUMBER: 25 VS.) 2:13-CV-291(NGR) 26 NANDITA BERRY, et al.,) 27 Defendants.)</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S 2 FOR THE UNITED STATES OF AMERICA: 3 Elizabeth Westfall 4 U.S. JUSTICE DEPARTMENT 5 CIVIL RIGHTS DIVISION 6 Room 7254 NWB 7 950 Pennsylvania Avenue, N.W. 8 Washington, D.C. 20530 9 (202) 514-0828 10 elizabeth.westfall@usdoj.gov 11 12 FOR THE NAMED DEFENDANTS RICK PERRY, ET AL.: 13 G. David Whitley 14 Assistant Deputy Attorney General 15 ATTORNEY GENERAL OF TEXAS 16 P.O. Box 12548 17 Austin, TX 78711-2548 18 (512) 475-3281 19 david.whitley@texasattorneygeneral.gov 20 21 FOR THE WITNESS: 22 Linda Halpern 23 Manager of Complex Litigation 24 ATTORNEY GENERAL OF TEXAS 25 P.O. Box 12548 Austin, TX 78711-2548 MC109 (512) 475-1969 linda.halpern@texasattorneygeneral.gov 26 27 Brooke Paup 28 Deputy Division Chief 29 Intergovernmental Relations Division 30 ATTORNEY GENERAL OF TEXAS 31 P.O. Box 12548 32 Austin, TX 78711-2548 33 (512) 936-1381 34 brooke.paup@oag.state.tx.us 35 FOR TEXAS LEAGUE OF YOUNG VOTERS' EDUCATION FUND: 36 Kelly P. Dunbar 37 WILMER HALE 38 1875 Pennsylvania Avenue, NW 39 Washington, DC 20006 40 (202) 663-6262</p>
<p style="text-align: right;">2</p> <p>1 BELINDA ORTIZ, et al.,) 2 Plaintiffs,) 3 VS.) CIVIL ACTION NUMBER: 4 STATE OF TEXAS, et al.,) 2:13-CV-348(NGR) 5 Defendants.) 6 7 8 ***** 9 10 DEPOSITION OF 11 BRYAN HEBERT 12 JUNE 17, 2014 13 ***** 14 15 HIGHLY CONFIDENTIAL 16 17 ORAL DEPOSITION OF BRYAN HEBERT, produced as a 18 witness at the instance of the Plaintiff, was duly 19 sworn, was taken in the above-styled and numbered cause 20 on the JUNE 17, 2014 from 9:05 a.m. to 5:51 p.m., before 21 Chris Carpenter, CSR, in and for the State of Texas, 22 reported by machine shorthand, at the Office of the 23 Attorney General, 209 West 14th Street, Austin, TX 24 78701, pursuant to the Federal Rules of Civil Procedure 25 and the provisions stated on the record or attached hereto.</p>	<p style="text-align: right;">4</p> <p>1 FOR THIRD-PARTY LEGISLATORS: 2 Arthur D'Andrea 3 Assistant Solicitor General 4 ATTORNEY GENERAL OF TEXAS 5 P.O. Box 12548 6 Austin, TX 78711-2548 7 (512) 936-2868 8 arthur.dandrea@oag.state.tx.us</p>

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<p style="text-align: right;">6</p> <p>1 162 Senate Rules, 82nd Legislature, Jan. 19, 152</p> <p>2 2011</p> <p>3 163 E-Mail Chain, Jan. 21, 2011 153</p> <p>4 164 E-Mail Chain, Jan. 22, 2011 168</p> <p>5 165 Copy of SB 14 182</p> <p>6 166 E-Mail Chain, Jan 24, 2011 188</p> <p>7 167 E-Mail, Jan. 24, 2011 194</p> <p>8 168 E-Mail, Jan. 27, 2011 198</p> <p>9 169 E-Mail Chain, Jan. 24, 2011 198</p> <p>10 170 E-Mail, Jan. 24, 2011 206</p> <p>11 171 Legislative History of SB 14 209</p> <p>12 172 E-Mail Chain, Feb. 1, 2011 213</p> <p>13 173 Defendant's Objections and Responses to 215</p> <p>14 Plaintiffs and Plaintiff Intervenors First Set of Interrogatories</p> <p>15 174 Senate Journal, Jan. 26, 2011 220</p> <p>16 175 Lt. Governor Dewhurst Statement Regarding 227</p> <p>17 Passage of Voter ID</p> <p>18 176 E-Mail, Jan. 27, 2011 and Attachment 230</p> <p>19 177 E-Mail Chain, 9/16/2013 251</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 A. Correct.</p> <p>2 Q. Do you remember the instructions you received</p> <p>3 at that deposition?</p> <p>4 A. It would probably be better if you'll refresh</p> <p>5 my memory.</p> <p>6 Q. Certainly. Have you been deposed in any other</p> <p>7 action since you were deposed in Texas versus Holder?</p> <p>8 A. No.</p> <p>9 Q. Have you testified in court since that</p> <p>10 deposition?</p> <p>11 A. No.</p> <p>12 Q. And to rereview the rules, you understand you</p> <p>13 must answer questions truthfully, accurately and</p> <p>14 completely?</p> <p>15 A. Yes.</p> <p>16 Q. The court reporter here will prepare a</p> <p>17 transcript of everything that is said today, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You must respond to my questions verbally and</p> <p>20 not shake your head in response; is that okay?</p> <p>21 A. Yes.</p> <p>22 Q. Please wait for me to finish my questions</p> <p>23 before you answer, and I will try to do the same.</p> <p>24 A. Okay.</p> <p>25 Q. I will try to ask you clear questions, but if</p>																														

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<p style="text-align: right;">9</p> <p>1 you don't understand a question, please feel free to ask 2 for a clarification, okay?</p> <p>3 A. Okay.</p> <p>4 Q. If you wish to stop and take a break, let me 5 know. We can take a break at any time. But if a 6 question is pending, I would ask that you answer the 7 question first, okay?</p> <p>8 A. Okay.</p> <p>9 Q. If you would -- you understand that you're 10 under oath. You've just been sworn in. You may be 11 subject to penalty of perjury for giving false or 12 misleading; right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand these instructions?</p> <p>15 A. I do.</p> <p>16 Q. Are you on any medication today that would 17 affect your ability to testify?</p> <p>18 A. No.</p> <p>19 Q. Is there any other reason why you can't testify 20 truthfully today?</p> <p>21 A. No.</p> <p>22 Q. I may use the terms Voter ID and Photo ID 23 interchangeably during this deposition. I want you to 24 interpret that term as broadly to mean a requirement 25 that a voter present a form of identification, whether</p>	<p style="text-align: right;">11</p> <p>1 document?</p> <p>2 MS. HALPERN: Do you have a copy for me, 3 Counsel?</p> <p>4 MS. WESTFALL: Yes, I do.</p> <p>5 MS. HALPERN: Thank you.</p> <p>6 MS. WESTFALL: I meant to pass that to 7 you. My apologies.</p> <p>8 Q. (By Ms. Westfall) Do you recognize this 9 document?</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. It is a subpoena to appear at this deposition.</p> <p>13 MS. WESTFALL: Reporter, could you please 14 mark this?</p> <p>15 (Exhibit 149 marked for identification.)</p> <p>16 Q. (By Ms. Westfall) You've been handed what's 17 been marked as Exhibit 149. Do you recognize this 18 document?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. It's a subpoena to produce certain documents 22 related to Voter ID.</p> <p>23 Q. Have you searched for these documents?</p> <p>24 A. I have.</p> <p>25 Q. Have you completed your search?</p>
<p style="text-align: right;">10</p> <p>1 it has a photo on it or otherwise, when voting in 2 person. Do you understand?</p> <p>3 A. Yes.</p> <p>4 Q. I may refer to Lieutenant Governor Dewhurst, 5 Mr. Dewhurst, or the Lieutenant Governor's Office. 6 Again, I want you to construe that, those terms as 7 broadly as possible, okay?</p> <p>8 A. Okay.</p> <p>9 Q. And also, when I refer to the term minority 10 voters, I mean voters who are not White, non-Anglo. Do 11 you understand?</p> <p>12 A. Yes.</p> <p>13 Q. When I refer to communications, I mean both 14 oral and written communications, including e-mail 15 communications. Do you understand?</p> <p>16 A. Yes.</p> <p>17 Q. Are you represented by counsel today?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. Ms. Halpern.</p> <p>21 MS. WESTFALL: Could you mark this? 22 (Brief discussion off the record.) 23 (Exhibit 148 marked for identification.)</p> <p>24 Q. (By Ms. Westfall) You've been handed what's 25 been marked as Exhibit 148. Do you recognize this</p>	<p style="text-align: right;">12</p> <p>1 A. I have.</p> <p>2 Q. Have you provided these documents to counsel?</p> <p>3 A. I have.</p> <p>4 Q. Do you conduct any official business for the 5 Lieutenant Governor through an e-mail that is not a 6 state-run or Lieutenant Governor office-run e-mail?</p> <p>7 A. No.</p> <p>8 Q. In other words, do you use a personal e-mail 9 account to conduct work business?</p> <p>10 A. No.</p> <p>11 Q. Did you ever work on any of the Lieutenant 12 Governor's campaigns?</p> <p>13 A. No.</p> <p>14 Q. Did you use an e-mail -- have you used an 15 e-mail to communicate with his campaigns ever?</p> <p>16 A. No.</p> <p>17 Q. Do you see, turning back to Exhibit 149, that 18 the subpoena requests you produce documents from e-mail 19 sent or received through official state e-mail as well 20 as e-mail addresses used to conduct other official state 21 business?</p> <p>22 A. Could you repeat that? I'm sorry.</p> <p>23 Q. Certainly. It's a bit of a confusing question. 24 Do you see that Exhibit 149, in the instructions, it 25 requires you to search both, in essence, your personal</p>

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<p style="text-align: right;">13</p> <p>1 e-mail and your official state or e-mail run through the 2 Lieutenant Governor's Office. Do you see that in the 3 instructions?</p> <p>4 MS. HALPERN: Can you give us a number, 5 Counsel?</p> <p>6 MS. WESTFALL: If you turn to Exhibit A on 7 Page 2 of Paragraph 8.</p> <p>8 Q. (By Ms. Westfall) Do you see that the 9 instructions direct you to look at your personal e-mail 10 as well as your work e-mail --</p> <p>11 A. Yes.</p> <p>12 Q. -- for responsive e-mails?</p> <p>13 A. Yes.</p> <p>14 Q. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. How does the Lieutenant Governor communicate 17 with his constituents?</p> <p>18 A. Typically, correspondence from constituents 19 comes into our office in the form of an e-mail or a 20 letter, and we reply in a similar manner.</p> <p>21 Q. Does he have an e-mail newsletter?</p> <p>22 A. I'm not sure. I don't think so.</p> <p>23 Q. Does he have a mailing list that he sends 24 letters to?</p> <p>25 A. I'm not sure.</p>	<p style="text-align: right;">15</p> <p>1 states?</p> <p>2 A. No.</p> <p>3 Q. And you were first hired -- I'm going to try to 4 lead you through some of your background so we can get 5 through this quickly since we've already covered that in 6 a prior deposition. You were first hired as counsel for 7 public policy for Mr. Dewhurst in 2007; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. You were promoted to Deputy General Counsel in 10 2008 or 2009; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. Which year was that you were promoted?</p> <p>13 A. 2009 -- wait -- yes, I'd say 2009.</p> <p>14 Q. Did your responsibilities as Deputy General 15 Counsel include providing opinions on law to the 16 Lieutenant Governor?</p> <p>17 A. Yes.</p> <p>18 Q. What were the circumstances under which that 19 occurred?</p> <p>20 A. Analyzing legislation, reviewing open records 21 requests, and whatever questions he might have about any 22 legal matter.</p> <p>23 Q. Can you think of any other instances when you 24 provided him with legal advice?</p> <p>25 MS. HALPERN: Let me caution you not to</p>
<p style="text-align: right;">14</p> <p>1 Q. Did you prepare for today's deposition?</p> <p>2 A. Yes.</p> <p>3 Q. How did you prepare?</p> <p>4 A. I reviewed my transcript of my deposition last 5 time. I met with counsel, and I just be sort of checked 6 to see if there were any current developments related to 7 implementation of Voter ID.</p> <p>8 Q. When you met with counsel, was anyone else 9 present?</p> <p>10 A. No.</p> <p>11 Q. Did you review any documents at that meeting 12 with counsel?</p> <p>13 A. Other than -- yes, copies of the bills, and my 14 transcript from last time.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. Other than your attorney, have you spoken to 18 anyone about your deposition today?</p> <p>19 A. No.</p> <p>20 Q. Did you bring any notes or documents with you 21 today?</p> <p>22 A. No.</p> <p>23 Q. Are you still a member of the Texas bar?</p> <p>24 A. Yes.</p> <p>25 Q. Are you licensed to practice law in other</p>	<p style="text-align: right;">16</p> <p>1 reveal any attorney-client confidences in answering that 2 question.</p> <p>3 Q. (By Ms. Westfall) And just to clarify, I'm 4 only asking for categories of communications, not the 5 substance thereof.</p> <p>6 A. I think those broad categories cover it.</p> <p>7 Q. Did your responsibilities as Deputy General 8 Counsel include providing assistance to the Lieutenant 9 Governor in any legal proceedings?</p> <p>10 A. I -- I do not recall. I do not think so.</p> <p>11 Q. Did your responsibilities as Deputy General 12 Counsel include providing professional legal services 13 unrelated to policy choices or political considerations?</p> <p>14 A. Can you just repeat that?</p> <p>15 Q. Sure. Did your responsibilities as Deputy 16 General Counsel include providing professional legal 17 services unrelated to policy or political 18 considerations?</p> <p>19 A. I mean, to the extent the Lieutenant Governor 20 does things like communicate with constituents or 21 receive open records requests or procedural matters 22 within the Senate, yes, but for the most part, it was 23 all under an umbrella of legal advice.</p> <p>24 Q. And you served as Deputy General Counsel until 25 January 2012?</p>

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<p style="text-align: right;">17</p> <p>1 A. Correct.</p> <p>2 Q. During the five-year period that you served as</p> <p>3 Mr. Dewhurst's deputy general counsel, you were the</p> <p>4 point person for the Secretary of State's office; is</p> <p>5 that right?</p> <p>6 A. Correct.</p> <p>7 Q. Fair to say you're quite familiar with the</p> <p>8 Texas election code?</p> <p>9 A. Correct.</p> <p>10 Q. You became employed somewhere else in January</p> <p>11 2012?</p> <p>12 A. Yes.</p> <p>13 Q. Where was that?</p> <p>14 A. I was an independent political consultant, and</p> <p>15 I had clients and was in the process of forming a</p> <p>16 partnership.</p> <p>17 Q. You served -- did you serve as the executive</p> <p>18 director for the Texas Conservative Roundtable?</p> <p>19 A. I did.</p> <p>20 Q. Was that a client or was that a paid employment</p> <p>21 position?</p> <p>22 A. Client.</p> <p>23 Q. While you were consulting in 2012, did you ever</p> <p>24 provide any advice to a campaign candidate or political</p> <p>25 party?</p>	<p style="text-align: right;">19</p> <p>1 counsel?</p> <p>2 A. Overseeing the legal staff, providing legal</p> <p>3 counsel to the Lieutenant Governor and staff, answering</p> <p>4 open records requests, serving as public information</p> <p>5 officer for our office, assorted other legal issues.</p> <p>6 Q. Are you still the point person for the</p> <p>7 Secretary of State's Office or is someone else handling</p> <p>8 those responsibilities?</p> <p>9 A. Someone else.</p> <p>10 Q. Who is that person?</p> <p>11 A. Constance Allison.</p> <p>12 Q. Has that person -- how long has Constance</p> <p>13 Allison been employed with Mr. Dewhurst?</p> <p>14 A. I believe she started when I did, which would</p> <p>15 be October or so, 2012.</p> <p>16 Q. Is she involved in any way in implementation of</p> <p>17 SB 14?</p> <p>18 A. Not that I know of.</p> <p>19 Q. Who is the point person for the Department of</p> <p>20 Public Safety in your office?</p> <p>21 A. I think currently that position is open, and so</p> <p>22 I imagine our acting chief of -- acting chief of staff</p> <p>23 would handle those requests.</p> <p>24 Q. Who is that person?</p> <p>25 A. John Opperman.</p>
<p style="text-align: right;">18</p> <p>1 A. No.</p> <p>2 Q. And what happened to your efforts to enter into</p> <p>3 a partnership?</p> <p>4 A. Before we could finish, I was given a great</p> <p>5 offer to return to the capital when my boss was</p> <p>6 remaining as Lieutenant Governor.</p> <p>7 Q. So was there a time when Mr. Dewhurst rehired</p> <p>8 you?</p> <p>9 A. Yes.</p> <p>10 Q. When was that?</p> <p>11 A. That was in October of 2012.</p> <p>12 Q. What position did he hire you for?</p> <p>13 A. General counsel.</p> <p>14 Q. How did that opportunity arise?</p> <p>15 A. He unexpectedly was given the opportunity to</p> <p>16 remain Lieutenant Governor, and his general counsel at</p> <p>17 the time left to take another position. And he had an</p> <p>18 opening, and his chief of staff reached out to me and</p> <p>19 offered me the position.</p> <p>20 Q. Who was his chief of staff at that time?</p> <p>21 A. Blaine Brunson.</p> <p>22 Q. What are your responsibilities? Do you</p> <p>23 currently still hold that position?</p> <p>24 A. I do.</p> <p>25 Q. What are your responsibilities as general</p>	<p style="text-align: right;">20</p> <p>1 Q. Do you handle communications with the</p> <p>2 Department of Public Safety in any way right now for the</p> <p>3 Lieutenant Governor?</p> <p>4 A. To the extent that DPS is involved with Voter</p> <p>5 ID, I have communicated with them.</p> <p>6 Q. And when have those communications occurred?</p> <p>7 A. Maybe only during 2013, a couple of e-mails.</p> <p>8 Q. What were the e-mails about?</p> <p>9 A. They were inquiries from me about efforts to</p> <p>10 implement distribution of identification.</p> <p>11 Q. Were these e-mails around the fall, early fall</p> <p>12 of 2013?</p> <p>13 A. I can't recall.</p> <p>14 Q. And what did you learn as a result of your</p> <p>15 e-mail communication with DPS?</p> <p>16 A. I learned that DPS -- I think I -- from this</p> <p>17 e-mail, I learned that DPS was increasing their office</p> <p>18 hours in certain locations. They were implementing</p> <p>19 mobile unit efforts. They were pursuing an education</p> <p>20 initiative. There may have been more, but I think</p> <p>21 that's right.</p> <p>22 Q. What prompted you to initiate these</p> <p>23 conversations?</p> <p>24 A. I met with some constituents who asked about</p> <p>25 state efforts to implement the program.</p>

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<p style="text-align: right;">21</p> <p>1 Q. Who were the constituents?</p> <p>2 A. I don't remember their individual names, but</p> <p>3 the organization, I believe, was called True the Vote.</p> <p>4 Q. And so you were following up on -- on</p> <p>5 meetings -- meetings that you had with these</p> <p>6 constituents and seeking a status update from DPS as to</p> <p>7 how they were implementing the EICs; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Have you had any communications with DPS</p> <p>10 subsequent to those e-mail communications in 2013?</p> <p>11 A. I don't think so.</p> <p>12 Q. Do you have any reason to know whether DPS has</p> <p>13 in fact undertaken the activities you've just testified</p> <p>14 to?</p> <p>15 A. I've seen news accounts to that effect, so yes.</p> <p>16 Q. Where were the news accounts?</p> <p>17 A. We at the Capitol every day, we get a list of</p> <p>18 legislative and newspaper clippings from across the</p> <p>19 state and across -- reading those every day, I've --</p> <p>20 I've seen various accounts.</p> <p>21 Q. And the accounts said what?</p> <p>22 A. They said that -- what I mentioned earlier,</p> <p>23 that there were efforts through local media to publicize</p> <p>24 extended hours, the mobile units, et cetera.</p> <p>25 Q. So you have not had any communications directly</p>	<p style="text-align: right;">23</p> <p>1 Q. How did you in your own mind decide when you</p> <p>2 would run things by Mr. Battle for review?</p> <p>3 A. I can't say, just a case-by-case basis.</p> <p>4 Q. Would you typically run draft e-mails by him</p> <p>5 before you sent them to other staff for the Senate?</p> <p>6 A. I may have, but not every time.</p> <p>7 Q. And if you did a memo or talking points or</p> <p>8 something more substantive, would you tend to run those</p> <p>9 by Mr. Battle before you sent them out?</p> <p>10 A. Again, maybe, it would depend on the specific</p> <p>11 item.</p> <p>12 Q. Were there any rules or guidelines that</p> <p>13 Mr. Battle presented you with or that were understood as</p> <p>14 to when you could or could not circulate written work</p> <p>15 product outside of the office?</p> <p>16 A. I don't think so.</p> <p>17 Q. Did anyone else in the office beside Mr. Battle</p> <p>18 review your written work product before it went out if</p> <p>19 you decided to run it by somebody?</p> <p>20 A. Possibly Julia Rathgeber, our policy director</p> <p>21 or legislative director, I forget her title.</p> <p>22 Q. Anybody else?</p> <p>23 A. Possibly our chief of staff, who in 2009 would</p> <p>24 have been Rob Johnson.</p> <p>25 Q. Did Mr. Dewhurst ever review any of your drafts</p>
<p style="text-align: right;">22</p> <p>1 with DPS since those e-mail communications in 2013; is</p> <p>2 that correct?</p> <p>3 A. I think that's correct.</p> <p>4 Q. Has anyone, to your knowledge, in your office,</p> <p>5 had any communications with DPS since the fall of 2013?</p> <p>6 A. Not that I'm aware. I assume someone has, but</p> <p>7 not relating to Voter ID.</p> <p>8 Q. During the 2009 legislative session, which I</p> <p>9 guess was the 81st Session, who did you report to?</p> <p>10 A. 2009, I would have been deputy general counsel</p> <p>11 and would have reported to Frank Battle.</p> <p>12 Q. Did Mr. Battle review drafts of --</p> <p>13 A. I'm sorry. It was either Frank Battle or</p> <p>14 Spencer Reid, whoever was the general counsel, and I'm</p> <p>15 forgetting when Spencer left.</p> <p>16 Q. Did Mr. Battle or Mr. Spencer review drafts of</p> <p>17 your work product before they were circulated outside of</p> <p>18 your office?</p> <p>19 A. Sometimes.</p> <p>20 Q. When would those circumstances arise?</p> <p>21 A. It -- I mean, some memos, I thought Frank or</p> <p>22 Spencer had, you know, some -- that they either needed</p> <p>23 to see it or it would be useful for them to see it, but</p> <p>24 not every memo or brief was sent through them for</p> <p>25 review.</p>	<p style="text-align: right;">24</p> <p>1 before they went out?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Never, not once?</p> <p>4 A. Not that I recall. There, again, there may</p> <p>5 have been some particular memo, and I guess it depends</p> <p>6 on who the intended audience would be, but not that I'm</p> <p>7 recalling now.</p> <p>8 Q. Did you ever prepare memos from Mr. Dewhurst</p> <p>9 that were also -- that you also subsequently shared with</p> <p>10 the staff in the Senate?</p> <p>11 A. I may have shared memos with both Lieutenant</p> <p>12 Governor Dewhurst and other staff.</p> <p>13 Q. Did any of those involve photo ID?</p> <p>14 A. Probably.</p> <p>15 Q. Do you recall which ones you shared with both</p> <p>16 Mr. Dewhurst and staff?</p> <p>17 A. I do not.</p> <p>18 Q. Do you recall drafting talking points about the</p> <p>19 bills, any of the bills that you shared with both</p> <p>20 Mr. Dewhurst and other staff?</p> <p>21 A. I probably did. I think drafting talking</p> <p>22 points and substantive sort of white papers is pretty</p> <p>23 common.</p> <p>24 Q. And they would be shared with both Mr. Dewhurst</p> <p>25 and other staff concurrently or sequentially?</p>

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7 (Pages 25 to 28)

<p style="text-align: right;">25</p> <p>1 A. They may have been.</p> <p>2 Q. During the 2011 82nd Session, who did you</p> <p>3 report to?</p> <p>4 A. 2011, I reported to Frank Battle, the general</p> <p>5 counsel.</p> <p>6 Q. And you're confident that that was the person</p> <p>7 you reported to?</p> <p>8 A. It was definitely Frank.</p> <p>9 Q. Closer in time, easier to remember. Did</p> <p>10 Mr. Battle have a similar kind of review process for</p> <p>11 your written work product --</p> <p>12 A. Yes.</p> <p>13 Q. -- that you just testified to in 2009?</p> <p>14 A. Yes.</p> <p>15 Q. Thank you. And I think I asked you this before</p> <p>16 a little differently but you -- were you involved in any</p> <p>17 capacity in any of Mr. Dewhurst's campaigns?</p> <p>18 A. No.</p> <p>19 MS. HALPERN: Objection, asked and</p> <p>20 answered.</p> <p>21 Q. (By Ms. Westfall) Were you involved -- did you</p> <p>22 have any advisory in or any informal role, unpaid role,</p> <p>23 in any campaign?</p> <p>24 A. No.</p> <p>25 Q. Did the campaign staff consult with you on</p>	<p style="text-align: right;">27</p> <p>1 individual legislators.</p> <p>2 Q. Do you recall that a bill advanced that was</p> <p>3 called SB 362?</p> <p>4 A. Again, I'm not clear on the number and what was</p> <p>5 in that bill.</p> <p>6 Q. Do you know where there was support in the</p> <p>7 Legislature for Voter ID in 2009?</p> <p>8 MS. HALPERN: Calls for speculation.</p> <p>9 A. Probably lots of reasons.</p> <p>10 Q. (By Ms. Westfall) Can you tell me what the</p> <p>11 reasons were?</p> <p>12 MS. HALPERN: Objection, calls for</p> <p>13 speculation.</p> <p>14 Q. (By Ms. Westfall) You may answer.</p> <p>15 A. The reasons why there was support for passing</p> <p>16 Voter ID?</p> <p>17 Q. In the Legislature, yes?</p> <p>18 A. I imagine that people wanted to stop voter</p> <p>19 fraud and increase the security of the elections,</p> <p>20 increase voter confidence. I'm sure there are other</p> <p>21 reasons and probably unique to each member that</p> <p>22 supported the bill.</p> <p>23 Q. Are you aware of any facts that supported the</p> <p>24 decision to push forward with Voter ID in 2009?</p> <p>25 MS. HALPERN: Objection, vague.</p>
<p style="text-align: right;">26</p> <p>1 anything ever?</p> <p>2 A. I'm sure -- I mean, I know people on his</p> <p>3 campaign. I'm sure I talked about the campaign and how</p> <p>4 it was going, but I'm not remembering any specific</p> <p>5 instance of any sort of consultation.</p> <p>6 Q. Did Texas -- did the Texas Legislature consider</p> <p>7 a Voter ID bill in 2007?</p> <p>8 A. I believe yes.</p> <p>9 Q. Was that bill HB 218?</p> <p>10 A. I -- I get the numbers and the years confused.</p> <p>11 If you had a copy to double-check, I could be certain.</p> <p>12 Q. And was -- rather than marking another exhibit,</p> <p>13 was any Voter ID bill passed, enacted in 2007?</p> <p>14 A. I don't believe so.</p> <p>15 Q. And was there support in the Legislature for</p> <p>16 advancing a Voter ID bill in the following legislative</p> <p>17 session?</p> <p>18 A. In 2009?</p> <p>19 Q. Yes.</p> <p>20 A. Regular session, I believe a bill was filed,</p> <p>21 and I do not believe a bill finally passed.</p> <p>22 Q. Do you recall whether any particular members</p> <p>23 expressed support for advancing a Voter ID bill in 2009?</p> <p>24 A. I don't remember particular members, no. I</p> <p>25 mean, obviously, the bill sponsors, but I can't remember</p>	<p style="text-align: right;">28</p> <p>1 A. Again, I'm not --</p> <p>2 Q. (By Ms. Westfall) Any factual support for a</p> <p>3 need for Voter ID that you're aware of?</p> <p>4 A. Meaning the existence of fraud?</p> <p>5 Q. Yes.</p> <p>6 A. I think, yes, my recollection is that there was</p> <p>7 evidence of fraud in the elections in Texas as there is</p> <p>8 in, I assume, elections of every jurisdiction.</p> <p>9 Q. Are you aware of any reasons for supporting</p> <p>10 Voter ID in 2009 that were not in the public record?</p> <p>11 MS. HALPERN: Objection, vague, calls for</p> <p>12 speculation.</p> <p>13 Q. (By Ms. Westfall) You may answer.</p> <p>14 A. Reasons to support the bill were not in the</p> <p>15 public record? I'm not aware of any.</p> <p>16 Q. Were there any constituencies in 2009 that</p> <p>17 wanted Voter ID?</p> <p>18 A. Constituencies of the public or in the</p> <p>19 Legislature?</p> <p>20 Q. Of the public?</p> <p>21 A. That wanted Voter ID? I mean, I think there</p> <p>22 are public opinion polls that show a pretty large</p> <p>23 majorities of the public supported the concept of Voter</p> <p>24 ID.</p> <p>25 Q. Putting aside polling, are you aware of</p>

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<p style="text-align: right;">29</p> <p>1 constituencies in the public in 2009 that were 2 supporting and pushing the Legislature to enact Voter 3 ID? 4 A. I don't know that they could be grouped into 5 constituencies except to the extent that they are 6 constituents who would like voter fraud reform or 7 improved voting security. 8 Q. Were there particular groups or organizations 9 that supported that cause in 2009? 10 A. I don't recall specific names of groups. 11 Q. Were there any individuals or groups that 12 contacted Mr. Dewhurst to express their support for 13 Voter ID in 2009? 14 A. I would have to look at, you know, old 15 communications. I don't recall the names of specific 16 groups. 17 Q. Did Mr. Dewhurst himself support advancing 18 Voter ID in 2009? 19 A. My memory is his public statements were, yes, 20 he supported Voter ID. 21 Q. Why did he want to advance a Voter ID bill in 22 2009? 23 A. Again, he probably has his own -- 24 MS. HALPERN: Let me caution you not to 25 reveal any attorney-client confidences in answering this</p>	<p style="text-align: right;">31</p> <p>1 think deliberative process applies. I think your 2 objection is not well-founded. I ask that you withdraw 3 it. 4 MS. HALPERN: I'm not withdrawing it, 5 Counsel. 6 Q. (By Ms. Westfall) Again, why did Mr. Dewhurst 7 want to advance Voter ID in the 2009 Legislative 8 session? 9 MS. HALPERN: You may answer as long as 10 you don't reveal any confidence or communications you 11 had with the Lieutenant Governor. Anything that was on 12 the public record you're free to reference. 13 MS. WESTFALL: What is the privilege 14 you're asserting on? 15 MS. HALPERN: In this case, it is 16 Lieutenant Governor Dewhurst's deliberative process 17 privilege and his legislative privilege. 18 Q. (By Ms. Westfall) You can answer. 19 A. Again, my memory is his public statements have 20 been consistent that he wants secure elections, to deter 21 fraud, to make sure that ineligible voters are not 22 casting votes. 23 Q. To be clear, for the record, are you 24 withholding any -- any testimony on the basis of your 25 counsel's advice not to testify on the basis of</p>
<p style="text-align: right;">30</p> <p>1 question. To the extent that you're able to answer the 2 question without doing so, go ahead. 3 A. Again, I think his public statements were -- 4 reflected the fact that he was concerned about voter 5 fraud and securing Texas elections and making sure that, 6 you know, eligible voters were able to cast votes in 7 secure elections. 8 MS. WESTFALL: And I'll object to that 9 objection to the extent that this is asking for policy 10 communications, not legal advice. 11 Q. (By Ms. Westfall) So did you answer fully or 12 was any of that withheld on the basis of purported 13 attorney-client privilege? 14 MS. HALPERN: Well, then, let me renew a 15 different objection, Counsel, on this, the deliberative 16 process objection. This witness is testifying as to his 17 opinions and his beliefs, which you're now asking him to 18 reveal the opinions or beliefs of others in the 19 Legislature and that violates their deliberative process 20 privilege. You may ask these questions of them, but I'm 21 going to object and direct him not to answer with 22 respect to the opinions of others. 23 MS. WESTFALL: Well, I think with regard 24 to deliberative process, I'm asking about Mr. Dewhurst's 25 roles and responsibilities as a legislator, so I don't</p>	<p style="text-align: right;">32</p> <p>1 deliberative process or legislative privilege? 2 MS. HALPERN: And let me add attorney- 3 client at this point, as well, since he was in the 4 position of deputy general counsel to the Lieutenant 5 Governor. 6 Q. (By Ms. Westfall) Are you withholding any 7 testimony on the basis of those instructions? 8 A. No. 9 Q. Were there any problems that Mr. Dewhurst was 10 trying to fix in 2009 with the Voter ID legislation? 11 A. Well, again, the bill was sponsored by I think 12 Senator Fraser, and you would have to ask him his 13 specific problems that he was trying to fix. The bill 14 as filed, again, I think was supported by the Lieutenant 15 Governor and other supporters. 16 Q. Were there particular constituencies that 17 Mr. Dewhurst was responding to in supporting Voter ID in 18 2009? 19 A. Again, you would have to ask him. I believe, 20 you know, again, that there was a broad range of people 21 who supported the bill. 22 Q. So in answer to my question, there were not 23 particular constituencies to -- 24 A. I -- I'm don't -- 25 Q. -- your knowledge that he was responding to?</p>

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<p style="text-align: right;">33</p> <p>1 A. I'm not aware of particular constituencies. 2 Q. Are you aware of any facts, any facts on the 3 ground that supported Mr. Dewhurst's support for Voter 4 ID in 2009? 5 A. I recall accounts of voter fraud that were laid 6 out in various stages of the bill debate, and again, as 7 fraud exists in most elections, jurisdictions, at some 8 point, at some level. 9 Q. And this is the -- the fraud you're referring 10 to is all within the -- in public debate in 2009; is 11 that correct? 12 A. There was a lot of references to fraud, and I 13 should add, also, I guess, incomplete or inaccurate 14 voter roles, other problems within the election process, 15 correct. 16 Q. Was Voter ID part of Mr. Dewhurst's legislative 17 agenda for 2009? 18 A. I'm not sure what you mean by agenda. I think 19 it's fair to say he supported the Voter ID bill. 20 Q. Was the Voter ID bill filed in December 2008? 21 A. I don't remember the date it was filed. I know 22 that bills can be filed beginning in November before 23 each session. 24 MS. WESTFALL: Could you mark this is as 25 150?</p>	<p style="text-align: right;">35</p> <p>1 don't recall specific communications. 2 Q. And were you involved yourself in the 3 development of Senate Bill 362? 4 A. Again, I know I, on behalf of my boss, was in 5 charge of sort of tracking and analyzing election 6 legislation including Voter ID. I cannot recall 7 specific communications on the development of Senate 8 Bill 362. That was five years ago. 9 Q. Were you involved in the drafting itself of 10 Senate Bill 362? 11 A. Again, I can't recall specific instances of 12 drafting language in the bill. 13 Q. I believe you testified in your previous 14 deposition that Jennifer Fagan from the State Affairs 15 Committee was involved in drafting. Does that sound 16 correct? 17 A. That's probably right. 18 Q. And Janice McCoy from Senator Fraser's was -- 19 Senator Fraser's was involved in the drafting; is that 20 correct? 21 A. That's probably right. 22 Q. While drafting Senate Bill 362, do you recall 23 discussing any particular provisions of the bill? 24 MS. HALPERN: Objection, assumes facts not 25 in evidence.</p>
<p style="text-align: right;">34</p> <p>1 (Exhibit 150 marked for identification.) 2 Q. (By Ms. Westfall) You've been handed what's 3 been marked as Exhibit 150. Do you recognize this 4 document? 5 A. (Witness looking at document.) 6 MS. WESTFALL: Could you mark this too? 7 (Exhibit 151 marked for identification.) 8 Q. (By Ms. Westfall) You've also been handed 9 Exhibit 151. 10 A. This looks like Senate Bill 362. 11 Q. Was this the bill you were just referring to 12 introduced by Senator Fraser? 13 A. Senator Fraser is a sponsor. I don't know at 14 what stage in the legislative process this version 15 reflects. 16 Q. Who developed Senate Bill 362? 17 A. I believe Senator Fraser and his staff with 18 input from other staff, others. 19 Q. Were you also involved yourself? 20 A. I -- I'm sure I was. I can't remember to what 21 extent. 2009? Right, I can't remember as to what 22 extent I was involved. 23 Q. Do you recall any communications that occurred 24 before SB 362 was filed related to its development? 25 A. I don't recall any. There may have been, but I</p>	<p style="text-align: right;">36</p> <p>1 A. So the question is while drafting? 2 Q. (By Ms. Westfall) While you were involved in 3 participating in the drafting process, do you recall any 4 discussions about any particular provisions of the bill? 5 A. I don't recall particular discussions about 6 particular provisions. 7 Q. Do you recall that Senate Bill 362 allowed the 8 use of both photo and nonphoto ID by voters? 9 A. Looking at the bill in front of me, I can see 10 that it does. 11 Q. Do you recall any discussions about the choice 12 to include that range of acceptable documents in the 13 bill? 14 A. I don't recall specific conversations. 15 Q. Do you recall any discussion about the 16 provision related to provisional ballots in Senate Bill 17 362? 18 A. I don't recall. 19 Q. Turning your attention back to Exhibit 150, 20 what forms, generally, of Voter ID are permitted by 21 Senate Bill 362? 22 A. What forms of ID? 23 Q. Of ID, yes. And let me see if I can turn your 24 attention to page 5 and 6 of the bill. 25 A. Senate Bill 362. It looks like acceptable</p>

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<p style="text-align: right;">37</p> <p>1 forms of photo identification are a driver's license or 2 personal ID card issued by DPS, a United States military 3 ID card, a United States citizenship certificate, United 4 States passport, and a concealed handgun license issued 5 by DPS, and a valid identification card with a 6 photograph issued by the federal or state government. 7 And then there's a list of additional acceptable proof: 8 their voter registration certificate or a copy of 9 utility bill, bank statement, government check, 10 paycheck, other government documents. Official mail 11 from the government. Certified birth certificate, U.S. 12 citizenship papers, marriage license or divorce decree, 13 adoption, name change or sex change records. Public 14 benefit cards, temporary driving permits, pilot license, 15 library card, hunting or fishing license. 16 Q. So would you describe this as a very broad set 17 of IDs? 18 A. It seems to be a broad set of IDs. 19 Q. Do you recall that in your previous deposition 20 you testified that you had several conversations with 21 Ms. Fagan and Ms. McCoy about the forms of ID to include 22 in Senate Bill 362? 23 A. I remember -- is the question do I recall from 24 my deposition? 25 Q. Do you recall that you testified to that fact</p>	<p style="text-align: right;">39</p> <p>1 witness, if this involves attorney-client 2 communications, do not reveal them. And to the extent 3 that you are being asked about his thoughts and 4 impressions, I'm going to direct you not to answer on 5 the basis of that would waive his legislative privilege. 6 You can waive your own. You can't waive somebody 7 else's. You can ask those questions of him. 8 MS. WESTFALL: I object to your objection. 9 Mr. Hebert only has legislative privilege and can assert 10 that on the basis of Mr. Dewhurst's legislative 11 privilege, which we take strong issue with in this 12 litigation, but it is not his privilege to -- it is not 13 his personal privilege, so I ask that you were withdraw 14 that objection because -- 15 MS. HALPERN: On the contrary, then he 16 can't answer your question at all. We're trying to be 17 cooperative here, and I'm allowing you to ask him 18 questions as to his thoughts and opinions. But you're 19 right, the privilege belongs to Lieutenant Governor 20 Dewhurst, as well, and he cannot answer questions about 21 Lieutenant Governor Dewhurst's thoughts and impressions, 22 because that would waive somebody else's -- that would 23 waive the deliberative process privilege of Lieutenant 24 Governor Dewhurst. He's free to waive that himself, but 25 this witness is not free to waive it for him.</p>
<p style="text-align: right;">38</p> <p>1 in your deposition? 2 A. I don't recall that specific time -- 3 Q. Do you recall that you in fact had several 4 conversations with Ms. Fagan and Ms. McCoy about the 5 forms of ID to include? 6 A. I recall having conversations with Ms. McCoy 7 and Ms. Fagan about Voter ID, but I don't recall the 8 nature of those five years after and two years after my 9 last deposition. 10 Q. Was Mr. Dewhurst involved in any of these 11 discussions? 12 A. Not that I recall. 13 Q. Was he involved in any discussion about what 14 forms of ID to include in Senate Bill 362? 15 A. Not that I recall, and I don't know what 16 conversations he may have had with other people. 17 Q. Yeah, I'm just asking you -- 18 A. Sure. 19 Q. -- to talk about things in your knowledge -- 20 A. Sure. 21 Q. -- obviously, thank you. 22 Do you know what -- what forms of ID 23 Mr. Dewhurst thought should be included in Senate Bill 24 362? 25 MS. HALPERN: Objection, and direct the</p>	<p style="text-align: right;">40</p> <p>1 MS. WESTFALL: Is that the sole privilege 2 you're asserting with regard to my question about 3 Mr. Dewhurst's opinions as to which forms of ID should 4 be included in this legislation? Is it only 5 deliberative process? 6 MS. HALPERN: Actually, that was 7 legislative privilege. 8 MS. WESTFALL: And to be clear, you're not 9 asserting deliberative process with regard to his 10 testimony I'm seeking to elicit on views of Mr. Dewhurst 11 with regard to ID and legislation; is that correct? 12 MS. HALPERN: It would depend whether it 13 was -- it would depend whether it was a final opinion or 14 not. If it's an evolving opinion, then it's 15 deliberative process privilege. If it's a final opinion 16 that was expressed in some way, then I guess the 17 decision has been reached. 18 MS. WESTFALL: So just so the record is 19 clear, you're asserting both deliberative process and 20 legislative privilege with regard to the testimony in 21 response to the question I just asked about what forms 22 of ID the Lieutenant Governor thought should be included 23 in the bill; is that correct? 24 MS. HALPERN: To the extent the witness 25 can answer the question with regard to public statements</p>

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<p style="text-align: right;">41</p> <p>1 that the Lieutenant Governor made, he's free to answer 2 it. 3 Q. (By Ms. Westfall) Could you answer as to 4 public statements? 5 A. I don't recall particular public statements 6 regarding Senate Bill 362. 7 Q. And do you recall -- I'm not asking for your 8 testimony. You're counsel's already directed you not to 9 answer. Do you recall private statements from 10 Mr. Dewhurst concerning his opinion on which forms of ID 11 should be included in the Senate Bill 362? 12 A. I don't recall. 13 Q. Are you familiar with the Crawford Voter ID 14 decision? 15 A. Yes. 16 Q. When was that issued? 17 A. Oh, I can't remember the year. 18 Q. Was it April 2008? 19 A. That sounds right. 20 Q. Did you read it when it was issued? 21 A. Yes. 22 Q. Did the Crawford decision have any impact on 23 the development of Voter ID legislation in Texas? 24 A. Probably so. 25 Q. Do you know how it did?</p>	<p style="text-align: right;">43</p> <p>1 speculation as phrased. 2 Q. (By Ms. Westfall) You may answer. 3 A. Yeah. I think individual legislators or 4 sponsors of the bill might interpret their own way. I 5 think it probably to each them said that if you enact a 6 plan that is not overly burdensome, then it will be held 7 constitutional. 8 Q. Did the Indiana law issue, do you recall, 9 permit the use of nonphoto ID? 10 A. I cannot recall if it was nonphoto or -- 11 Q. And I will represent to you that it did not 12 allow the use of nonphoto ID. 13 A. Okay. 14 Q. Why did, in light of the Indiana law and the 15 Crawford decision, SB 362 permit voters to present 16 nonphoto ID? 17 A. I don't know. 18 Q. Why was nonphoto ID permissible under Senate 19 Bill 362? 20 MS. HALPERN: Objection, asked and 21 answered. 22 Q. (By Ms. Westfall) You may answer. 23 A. Why was it permissible? 24 Q. Why was it included as a form of permissible 25 ID?</p>
<p style="text-align: right;">42</p> <p>1 A. It -- I can say for myself, it impacted my 2 understanding of permissible boundaries under the 3 constitution for voter identification legislation. 4 Q. And what were those boundaries? 5 A. I think, broadly speaking, the court in 6 Crawford said that the state has an interest in securing 7 elections and improving confidence in those elections 8 and deterring fraud and making sure that voter roles are 9 accurate. That, I believe it says even if in some 10 negligible way individual voters might be adversely 11 impacted, if that does not rise to a level that 12 outweighs the good brought by enacting legislation, then 13 the law might be upheld. In other words, there can be 14 some burden involved with photo identification or voter 15 identification legislation, and through that lens, they 16 upheld Indiana's voter identification. 17 Q. And based on what you just said described about 18 the Crawford decision, how did that shape your view of 19 how Texas could enact Voter ID legislation? 20 A. I think, again, generally speaking, it showed 21 that -- it confirmed that the Supreme Court will uphold 22 photo identification requirements in some circumstances. 23 Q. And how did that apply to the Texas 24 legislature's efforts to enact Voter ID? 25 MS. HALPERN: Objection, calls for</p>	<p style="text-align: right;">44</p> <p>1 A. I don't know. I mean, I can say generally in 2 the legislative process, bills change for lots of 3 reasons: The desire of the sponsor, input from other 4 legislators, input from the public, litigation. It 5 could be any reason or all of those reasons. 6 Q. But do you know as to this particular issue as 7 to why nonphoto was included in Senate Bill 362? 8 A. I do not, no. 9 Q. Are you familiar with the model Voter ID bill 10 created by the American Legislative Exchange Council 11 known as ALEC? 12 A. I know what ALEC is, but I'm not familiar with 13 new specific model legislation. 14 Q. And do you have any understanding as to why 15 Senate Bill 362 limited the forms of acceptable ID to 16 those listed that you just testified to on Pages 5 and 6 17 of Exhibit 150? 18 A. I don't know why this list is this list 19 specifically. 20 Q. Do you know how any of the IDs on that list 21 arose in terms of their inclusion in the bill? 22 A. Some of them are current law or were current 23 law at the time and were retained. 24 Q. And those IDs would include which ones? 25 A. Driver license, some of the nonphoto utility</p>

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<p style="text-align: right;">45</p> <p>1 bill, bank statement, government check, paycheck, other 2 government documents. 3 Q. Anything else? 4 A. That appears to be all of them that were 5 retained. 6 Q. Do you recall how provisional ballots were 7 treated under Senate Bill 362? 8 A. I don't recall, but I could look if you would 9 like. 10 Q. Certainly, that would be helpful. 11 Unfortunately, I don't have a page to direct you to, but 12 I'm sure you're sufficiently familiar with this to find 13 it quickly. 14 A. It looks like on the bottom of Page 7 on to 15 Page 8 is the election code section dealing with 16 provisional ballots, and it looks like it just changes a 17 cross reference, so I guess it retains the existing 18 provisional ballot system. 19 Q. What was that system? 20 A. As I understand it at the time, if the person 21 appears without appropriate identification or is 22 otherwise possibly not eligible to vote, they may still 23 cast a provisional ballot if they execute an affidavit 24 stating that they are indeed a registered voter and are 25 eligible to vote.</p>	<p style="text-align: right;">47</p> <p>1 Q. So is it true, fair to say, that Senate Bill 2 362 was more lenient with regard to provisional ballots 3 than the Indiana law was? 4 MS. HALPERN: You're asking him to rely on 5 your representation in answering -- 6 MS. WESTFALL: Yes. 7 MS. HALPERN: -- that question, Counsel? 8 MS. WESTFALL: Yes. 9 A. I'm not sure I would use the word lenient. I 10 think a voter allowed to return with appropriate 11 identification could be more certain that their 12 provisional ballot would be counted. And so they are 13 different systems, I would allow that. 14 Q. (By Ms. Westfall) But certainly under Senate 15 Bill 362, the voter was not required to return a second 16 time to a voting official to show ID, correct? And that 17 different from Indiana; is that correct? 18 A. I think that's correct. 19 Q. Before Senate Bill 362 was filed, was there any 20 analysis of the likely impact of that bill on voters 21 that you're aware of? 22 A. I can't recall from 2009. 23 Q. Any analysis about the number of registered 24 voters without requisite ID under Senate Bill 362? 25 A. I don't recall.</p>
<p style="text-align: right;">46</p> <p>1 Q. The voter need not take any further action 2 after other casting that ballot to ensure that it will 3 be counted; is that correct? 4 A. They have to -- after they sign an affidavit. 5 So they have to cast a provisional ballot and then sign 6 the affidavit. 7 Q. And after that, the voter need not return to 8 the election office with a form of acceptable ID; is 9 that correct? 10 A. I think that's correct. 11 Q. Do you know why Senate Bill 362 permitted 12 provisional ballots cast by voters without necessary ID 13 to be counted without requiring further action on the 14 part of the voter? 15 A. I don't know. 16 Q. Do you know why it essentially maintain the 17 status quo for provisional ballots? 18 A. I don't know. 19 Q. Are you aware of how the Indiana law at issue 20 in Crawford treated provisional ballots? 21 A. I cannot recall. 22 Q. Do you recall -- well, I'll represent to you 23 that it required the voter to return to the office. 24 Does that sound familiar? 25 A. Okay. I take your word for it.</p>	<p style="text-align: right;">48</p> <p>1 Q. Do you recall any communications about the 2 impact of Senate Bill 362 on minority voters? 3 A. I don't recall specific communications. 4 Q. Are you aware of any analysis of the impact of 5 Senate Bill 362 on minority voters? 6 A. I can't recall any specific. 7 Q. Was there any consideration given to analyzing 8 Spanish surnamed registered voters who had Texas driver 9 license or personal ID? 10 A. It's possible. I just can't recall. 11 Q. So you testified in your prior deposition about 12 the purpose of Senate Bill 362, in which I think you 13 alluded to earlier in this deposition, the purposes were 14 to improve the integrity of elections and instill 15 confidence in the electorate. Do you recall that 16 testimony? 17 A. I don't recall the testimony, but I'm sure 18 that's correct. 19 Q. And is that still your testimony about the 20 purpose of the Senate Bill 362? 21 A. I think there are certain -- those are some of 22 the purposes, sure. 23 Q. Which are the other purposes? 24 A. Again, you'd have to ask the bill sponsors, 25 their purpose on sponsoring it and passing legislation.</p>

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<p style="text-align: right;">49</p> <p>1 Q. Do you recall any that you were kind of -- you 2 were kind of in the mix of the development and drafting 3 of Senate Bill 362. Do you recall any other purposes 4 sitting here today?</p> <p>5 A. And again, I think public statements that I 6 recall are in that same vein, protecting voting 7 integrity, improving voter confidence, making sure that 8 voter fraud or inaccurate voter roles or other problems 9 did not result in inaccurate or unsecured elections.</p> <p>10 Q. And what was the -- what was the basis for the 11 understanding that there was -- that there was the lack 12 of confidence in the electorate?</p> <p>13 A. Well, I think one indication would have been 14 that public polls again showed overwhelming numbers of 15 voters -- of citizens supported some form of photo ID.</p> <p>16 Q. And from the polls supporting Voter ID, you 17 could infer that there was a lack of confidence in the 18 electorate, is that your testimony?</p> <p>19 A. I think if people wanted an improvement in the 20 process, that would probably be derived from a -- some 21 lack of confidence in the system.</p> <p>22 Q. And aside from those public opinion polls, is 23 there any other basis or facts you're aware of that made 24 the legislature feel there was a lack of confidence in 25 the voting system?</p>	<p style="text-align: right;">51</p> <p>1 outside of in-person voter fraud. I mean, to the extent 2 that it shows the Legislature and local officials are 3 concerned about fraud and aware of fraud and taking 4 steps to prevent that fraud, that may indeed have an 5 impact and -- and deter other types of fraud.</p> <p>6 Q. (By Ms. Westfall) And what particular types of 7 fraud are you -- are you describing or referring to?</p> <p>8 A. I mean, generally, in the elections, there can 9 be in-person voter fraud. There can be mail ballot 10 fraud. There might be undue coercion of voters or 11 manipulation of results. I'm sure there are some others 12 that I'm forgetting.</p> <p>13 Q. Which types of fraud specifically do you 14 believe existed in 2009 that warranted Voter ID 15 legislation?</p> <p>16 MS. HALPERN: Objection, compound.</p> <p>17 Q. (By Ms. Westfall) You may answer.</p> <p>18 A. The types of fraud that I believe existed in 19 2009 that warranted Voter ID legislation? Again, I 20 think there's, you know, evidence in our history of each 21 of those types of fraud I just mentioned, and Voter ID 22 was certainly designed, as far as I can tell, to combat 23 one of those types of fraud.</p> <p>24 Q. And I believe you just testified that it would 25 combat the in-person voter fraud at the polls; is that</p>
<p style="text-align: right;">50</p> <p>1 A. Again, I may be forgetting some testimony 2 during that session. I'm sure individual sponsors had 3 communications with their constituents, but I'm not 4 particularly aware of those.</p> <p>5 Q. In terms of improving the integrity of 6 elections, again, what was the need for that in 2009?</p> <p>7 A. The need to?</p> <p>8 Q. What was the factual basis for the need to 9 remedy that issue?</p> <p>10 A. Again, I can't speak for what each individual 11 bill sponsor supporter thinks. My understanding at the 12 time is that fraud exists in the elections, and there 13 are various ways you can improve the security of those 14 elections. And those efforts to improve the security 15 are worthwhile if they're not unduly burdensome on 16 voters.</p> <p>17 Q. And to be clear, Voter ID addresses the problem 18 of in-person voter fraud; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And so is it your testimony that Voter ID 21 legislation to address that type of fraud addresses 22 fraud more generally?</p> <p>23 MS. HALPERN: Objection, confusing, vague.</p> <p>24 A. I -- I think it's unclear to me exactly how 25 certain types of fraud might be deterred from this</p>	<p style="text-align: right;">52</p> <p>1 correct?</p> <p>2 A. Correct. That was --</p> <p>3 Q. Is it also your testimony that it would address 4 these other types of fraud?</p> <p>5 A. It's my testimony that the intent of the bill, 6 as I understand it, was to address in-person voter 7 fraud, and that that attempt to address one type of 8 fraud might have the additional impact of deterring 9 other types of fraud.</p> <p>10 Q. Do you have any factual support for that 11 inference?</p> <p>12 A. No, other than, you know, common sense and 13 looking at the legislature generally.</p> <p>14 Q. How would Senate Bill 362 eliminate the lack of 15 confidence in the electorate?</p> <p>16 A. I mean, again, I think in my impression is that 17 if you make steps to eliminate fraud in elections, 18 people that do cast votes that are eligible voters can 19 be more secure that their vote will be counted and not 20 offset by an ineligible voter, and that will instill 21 confidence in that particular elector or voter, I should 22 say, and in the electorate, in general.</p> <p>23 Q. And how do you -- what's the basis for 24 inferring that?</p> <p>25 A. Again, I think just generally, any legislation,</p>

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<p style="text-align: right;">53</p> <p>1 any criminal law, any area where the legislature is 2 acting and taking steps, the intended impact, at least, 3 is to give the public confidence that the legislature is 4 acting on their behalf. 5 Q. Do you have any factual basis, other than what 6 you just testified to, that drawing that conclusion that 7 the bill would have that effect? 8 A. I don't have -- I can't -- I don't have a 9 specific example, again, other than just that's sort of 10 the whole point of the legislature is to act on behalf 11 of the public presumably to instill confidence and not 12 to instill some other feeling. 13 Q. Are you aware whether Mr. Dewhurst tied Voter 14 ID to immigration as issues that -- in other words, put 15 differently, that Voter ID and enacting that would help 16 to stem illegal immigration? 17 MS. HALPERN: Let me again caution you not 18 to reveal any communications while you were wearing your 19 attorney-client privilege hat, not -- not to violate the 20 deliberative process privilege to the extent it's 21 applicable to this question, and not to violate his 22 legislative privilege. 23 A. I'm not aware of any link between immigration 24 and Voter ID. 25 Q. (By Ms. Westfall) And are you not -- is any of</p>	<p style="text-align: right;">55</p> <p>1 possess these documents in 362? 2 Q. Yes. 3 MS. HALPERN: Objection, calls for 4 speculation. 5 Q. (By Ms. Westfall) You may answer. 6 A. I don't know specific segments of the 7 population. It would seem to me that -- that any 8 segment of the population would be able in some way to 9 obtain at least one of these forms. 10 Q. But getting back to my question in terms of 11 current possession, as opposed to ability to obtain ID 12 in 362, are there any portions of the population that 13 you believe are less likely to currently possess the 14 forms of ID in 362? 15 A. I'm not sure. 16 Q. Are poor voters the least likely to possess ID 17 documents? 18 A. Well, I mean, one of the forms of ID is a 19 government check or government benefits, and so those, 20 in fact, to be populations most likely to receive those. 21 Driver's licenses or personal identification cards I 22 think are necessary to obtain a lot of those benefits, 23 so maybe -- I think they seem as likely to be able to 24 obtain or to possess those documents. So I guess I 25 would say not necessarily to your question.</p>
<p style="text-align: right;">54</p> <p>1 your answer not providing testimony based on the 2 instruction of your counsel? 3 A. No. 4 Q. Did Senate Bill 362, to your knowledge, require 5 a voter to prove citizenship when casting a ballot? 6 A. I'd have to look at the bill if you don't mind. 7 Q. Sure. Certainly. 8 A. I think some of these forms of ID would require 9 citizenship to obtain possibly, but they're also some on 10 here that it's possible that noncitizens would be able 11 to obtain. 12 Q. So is your testimony that it -- Senate Bill 362 13 would not require a voter to prove citizenship for that 14 reason because some of these IDs do not require proof of 15 citizenship; is that correct? 16 MS. HALPERN: Objection, misstates the 17 testimony. 18 Q. (By Ms. Westfall) You may answer. 19 A. That sounds correct. 20 Q. Are you aware of any nonpublic unstated 21 purposes of Senate Bill 362? 22 A. I'm not aware of any. 23 Q. What portion of the public is least likely to 24 possess ID documents? 25 A. What portion of the public is least likely to</p>	<p style="text-align: right;">56</p> <p>1 Q. Are minority voters in Texas more likely to be 2 poor than Anglos, to your knowledge? 3 A. I would assume, I mean, I think historically, 4 poor populations have generally had higher 5 representation among minorities, that's fair. And 6 that's probably true in Texas and every other state. 7 Q. Did supporters of Senate Bill 362 adopt any 8 procedural mechanisms to increase the likelihood of the 9 bill's passage? 10 A. I'm sorry, could you repeat? 11 Q. Certainly. Did supporters of Senate Bill 362 12 adopt any procedural mechanisms to increase the 13 likelihood of the bill's passage? 14 A. I don't recall specific examples. I think any 15 bill sponsored uses the rules of the House and Senate to 16 get their bill passed, whether those are unique or 17 special or any other descriptive, probably in the eye of 18 the beholder. If they're in the rules, they're in the 19 rules, and at the disposal of the sponsor. 20 Q. But were -- getting back to my question. Were 21 there any procedural mechanisms you can recall that were 22 put into place by the supporters of Senate Bill 362 to 23 ensure its passage? 24 A. I don't recall specific examples. 25 Q. Did the Lieutenant Governor's Office play any</p>

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<p style="text-align: right;">57</p> <p>1 role in attempting to secure passage of 362 in the 2 Senate?</p> <p>3 A. I don't recall specific actions. I think the 4 Lieutenant Governor supported Senate Bill 362, and he 5 probably treated it like he treated any other bill that 6 he supported. He -- I'm sure -- again, you would have 7 to ask him or the people he talked to, but the -- you 8 know, the Lieutenant Governor speaks to senators and 9 house members and the public to garner support like any 10 elected official does.</p> <p>11 MS. WESTFALL: Could you please mark this? 12 (Exhibit 152 marked for identification.)</p> <p>13 Q. (By Ms. Westfall) Just for the record, I'm 14 using some exhibits from your prior deposition that have 15 stamps on them just so that they can be cross-referenced 16 with your prior testimony.</p> <p>17 You've been handed what's been marked in 18 this deposition in this matter, Veasey versus Perry, 19 Exhibit Number 152. Do you know what this is?</p> <p>20 A. The first page looks like the cover of the 21 Senate rule book. And the second page -- this is the 22 rules from 2009, and the second page appears to be Rule 23 5.11 regarding special orders.</p> <p>24 Q. Could you describe this rule, please?</p> <p>25 A. Rule 5.11 says that, "Any bill, resolution, or</p>	<p style="text-align: right;">59</p> <p>1 5.11 from the 2009 session, Exhibit 152, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And I believe you just read Rule 5.11 in it's 4 entirety; is that right?</p> <p>5 A. Correct.</p> <p>6 Q. How did the Senate come to adopt this rule?</p> <p>7 A. The beginning of every session, the Senate 8 adopts rules for that session, and this was part of the 9 rules for that session.</p> <p>10 Q. How did it come to adopt Rule 5.11, Part D, 11 related to Voter ID requirements?</p> <p>12 A. I don't remember the specifics of the 13 conversation, but again my understanding is that the 14 rules are adopted as a whole before -- at the beginning 15 of session.</p> <p>16 Q. How did this particular provision arise, 5.11D, 17 in the 2009 rules?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you recall that there was a closed-door 20 caucus of the full Senate to discussion 5.11D in the 21 2009 rules?</p> <p>22 A. I don't recall that, and that's a Senators only 23 meeting so I would haven't wouldn't have been in the 24 room.</p> <p>25 Q. So all caucus meetings are of Senators only,</p>
<p style="text-align: right;">58</p> <p>1 other measure may be made a special order for a future 2 time by affirmative vote of two-thirds of the members 3 present. A special order shall be considered at the 4 time for which it is set and considered from day to day 5 until disposed of, unless at the time so fixed there is 6 pending business under a special order, but it may be 7 suspended by a two-thirds vote of all the members 8 present. If a special order is not reached or 9 considered, it shall not lose its place as a special 10 order. And all of those orders are subject to joint 11 rules and Rule 5.10. Upon vote of four-fifths of the 12 members, a special order may be reset to an earlier time 13 than previously scheduled. And then notwithstanding 14 Subsection A, a bill or resolution relating to voter 15 identification requirements reported from the committee 16 of the whole may be set as a special order for a time at 17 least 24 hours after the motion is adopted by a majority 18 of the Senate." And then there are -- there are various 19 editorial notes and notes on previous rulings.</p> <p>20 MS. HALPERN: Counsel, we've been going 21 over an hour. Can we take a break?</p> <p>22 MS. WESTFALL: Certainly. Let's take a 23 break.</p> <p>24 (Recess from 10:09 to 10:28 a.m.)</p> <p>25 Q. (By Ms. Westfall) We were just discussing Rule</p>	<p style="text-align: right;">60</p> <p>1 not staff; is that correct?</p> <p>2 A. That is my understanding.</p> <p>3 Q. Were you ever in attendance of a full Senate 4 caucus meeting yourself?</p> <p>5 A. No.</p> <p>6 Q. Did you hear about what happened at a full 7 Senate caucus meeting in advance of the adoption of the 8 5.11D?</p> <p>9 A. No.</p> <p>10 MS. WESTFALL: Would you mark this, 11 please.</p> <p>12 A. I should -- to clarify --</p> <p>13 THE COURT REPORTER: I'm sorry. Let me 14 mark this, please..</p> <p>15 THE WITNESS: Oh, I'm sorry. 16 (Exhibit 153 marked for identification.)</p> <p>17 Q. (By Ms. Westfall) You've been handed what's 18 been marked at 153.</p> <p>19 Did you want to clarify your testimony?</p> <p>20 A. I was just going to add that my understanding 21 is that Senators can invite whomever they want into that 22 caucus meeting, but I was not invited to that caucus 23 meeting.</p> <p>24 Q. I see. Could you turn your attention to 25 Exhibit 153.</p>

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<p style="text-align: right;">61</p> <p>1 A. Okay.</p> <p>2 Q. Have you seen this -- could you take a look at</p> <p>3 this exhibit.</p> <p>4 A. Okay.</p> <p>5 Q. What is the article about?</p> <p>6 A. It's about the beginning of the session in 2009</p> <p>7 and the rules debate and Voter ID debate.</p> <p>8 Q. Do you recall having been in the closed-door</p> <p>9 caucus of the full Senate meeting referred to in this</p> <p>10 article?</p> <p>11 A. Again, I was not.</p> <p>12 Q. Do you recall hearing about what was said in</p> <p>13 this closed-door Caucus of the full Senate?</p> <p>14 A. I did not hear anything.</p> <p>15 Q. Do you know which particular Senators supported</p> <p>16 Rule 5.11D?</p> <p>17 A. I imagine the Senators that voted for the</p> <p>18 adoption of the rules, and I don't know the specific</p> <p>19 Senators who did.</p> <p>20 Q. Did the Senate ultimately adopt Rule 5.11D?</p> <p>21 A. My memory is, yes.</p> <p>22 Q. Is it true that only a simple majority of</p> <p>23 Senators was required to enact the rules for 2009?</p> <p>24 A. My memory is that Senate rules are adopted by a</p> <p>25 majority of the Senators.</p>	<p style="text-align: right;">63</p> <p>1 Q. A bill.</p> <p>2 A. I mean, my understanding of the legislative</p> <p>3 process is bills are introduced and referred to</p> <p>4 committee and go through the committee process, and if</p> <p>5 the Senator wished to bring it to the floor, it's placed</p> <p>6 on an Intent Calendar, and then if the Lieutenant</p> <p>7 Governor recognizes that Senator on that bill, the</p> <p>8 Senate debates it. And there are various procedures and</p> <p>9 timetables in the mix there.</p> <p>10 Q. How does the 5.11D change consideration of the</p> <p>11 Voter ID bill for 2009?</p> <p>12 A. It treated it -- it said that if a special</p> <p>13 order relates to Voter ID, then it could be considered</p> <p>14 within 24 hours.</p> <p>15 Q. And in order to do that only required a vote of</p> <p>16 the majority of the Senate; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And ordinarily to set a special order would</p> <p>19 require two-thirds support from two-thirds of the</p> <p>20 Senators; is that correct?</p> <p>21 MS. HALPERN: Objection, misstates the</p> <p>22 testimony.</p> <p>23 A. I think -- right. I mean 5.11A says that a</p> <p>24 special order may be set with affirmative vote of</p> <p>25 two-thirds. And then D says, on Voter ID, it may be set</p>
<p style="text-align: right;">62</p> <p>1 Q. And not of two-thirds of the Senators; is that</p> <p>2 correct?</p> <p>3 A. I think that's correct but not -- not</p> <p>4 parliamentarian.</p> <p>5 Q. Do you know why Rule 5.11D was adopted?</p> <p>6 A. I assume it was adopted because the Senate</p> <p>7 liked it.</p> <p>8 Q. Any other reasons?</p> <p>9 A. If I could look back at the rule, 5.11D deals</p> <p>10 with photo identification bills or resolutions. I</p> <p>11 assume that they wanted to make sure that those types of</p> <p>12 bills or resolutions were treated as outlined in 5.11D.</p> <p>13 Q. What was the purpose of allowing -- providing</p> <p>14 that Voter ID legislation could be treated as a special</p> <p>15 order?</p> <p>16 A. I don't know the purpose of it.</p> <p>17 Q. What was the effect of treating it as a special</p> <p>18 order?</p> <p>19 A. As I understand Senate rules, and as 5.11 lays</p> <p>20 out, it would allow Voter Identification requirements to</p> <p>21 be heard before the Committee of the Whole, 24 hours or</p> <p>22 more after the special order was set.</p> <p>23 Q. How would a bill ordinarily be treated if this</p> <p>24 5.11D were not in place?</p> <p>25 A. Bill or special order?</p>	<p style="text-align: right;">64</p> <p>1 by a majority of the members of the Senate.</p> <p>2 Q. (By Ms. Westfall) So it carves out an exception</p> <p>3 for Voter ID with regard to its designation as a special</p> <p>4 order; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Was Senate Bill 362 assigned to the Committee</p> <p>7 of the Whole?</p> <p>8 A. My memory is, yes, it was.</p> <p>9 Q. What is the Committee of the Whole?</p> <p>10 A. Instead of being referred to committee with a</p> <p>11 limited number of members that meets in a committee</p> <p>12 room, typically, the Committee of the Whole consists of</p> <p>13 every Senator and the Lieutenant Governor and they meet</p> <p>14 on the Senate floor.</p> <p>15 Q. And ordinarily would 362, as an election bill,</p> <p>16 have been assigned to the State Affairs Committee?</p> <p>17 A. Most State Affairs -- most election bills in</p> <p>18 the Senate are referred to State Affairs. My memory is</p> <p>19 that some could be referred to jurisprudence and it's</p> <p>20 possible some other committee.</p> <p>21 Q. Can you recall any other election bill that was</p> <p>22 referred to the Committee of the Whole besides 362,</p> <p>23 Senate Bill 362 and Senate Bill 14?</p> <p>24 A. I don't recall any.</p> <p>25 Q. Can you recall any other bills that the</p>

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<p style="text-align: right;">65</p> <p>1 Lieutenant Governor assigned to the Committee of the 2 Whole besides Senate Bill 362?</p> <p>3 A. I'm sorry, what types of bills?</p> <p>4 Q. Any bill.</p> <p>5 A. Any bill. My memory is that the Committee of 6 the Whole has met before and I cannot remember all the 7 specific instances except it's possible redistricting, 8 it's possible school finance -- and in fact, I should -- 9 to clarify an earlier remark: The school finance bill 10 from a few sessions ago may have had some election 11 provisions in it. Those are the examples that come to 12 mind.</p> <p>13 Q. So school financing, what session was that, 14 that it was referred to the Committee of the Whole?</p> <p>15 A. It may have been, and again, I can't remember 16 if it was or not. It may have been -- and it would have 17 been 2006. But again, I cannot remember for sure if it 18 was the Committee of the Whole.</p> <p>19 Q. Was school financing set as a special order by 20 a simple majority?</p> <p>21 A. I can't recall.</p> <p>22 Q. Other than the bills you just testified to, are 23 you aware of any other bills that Lieutenant Governor 24 has assigned to the Committee of the Whole?</p> <p>25 A. I can't remember others.</p>	<p style="text-align: right;">67</p> <p>1 that they can immediately or within a very short period 2 of time be heard by the full Senate?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Do Mr. Dewhurst and Senator Fraser have a 5 social relationship outside of their working 6 relationship?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know whether Mr. Dewhurst had dinner 9 with Senator Fraser on March -- early March 2009?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know when Senate Bill 362 was considered 12 by the Senate in 2009?</p> <p>13 A. I don't remember the date.</p> <p>14 Q. Could you refer back to -- turn your attention 15 back to Exhibit 151.</p> <p>16 A. Yes.</p> <p>17 Q. Could you take a look at that -- and what is 18 that?</p> <p>19 A. Exhibit 151 is a printout from the Texas 20 Legislature Online. It is the bill history for Senate 21 Bill 362 from the 81st regular session.</p> <p>22 And your question is when did the Senate 23 consider Senate Bill 362?</p> <p>24 Q. Yes.</p> <p>25 A. Well, it was received by the Secretary of the</p>
<p style="text-align: right;">66</p> <p>1 Q. And in terms of the redistricting bill, which 2 bill was this that was referred to the Committee of the 3 Whole?</p> <p>4 A. I can't remember specific examples. Again, I 5 was just -- if the Committee of the Whole -- I remember 6 the Committee of the Whole has met in the last decade 7 that I've been around the Capitol and my memory is that 8 it might have been for redistricting one year, but I 9 can't remember a specific year example.</p> <p>10 Q. Do you know whether Mr. Dewhurst assigned 11 Senate Bill 362 to the Committee of the Whole to 12 expedite its consideration?</p> <p>13 A. I don't know why he did.</p> <p>14 Q. Did it have the effect of expediting 15 consideration?</p> <p>16 A. I can say, generally speaking, the Committee of 17 the Whole might expedite it, but it still I think 18 requires separate votes by the Committee of the Whole 19 and by the Senate as a sitting body. And I also 20 remember, in I think it was 2009, this particular 21 Committee of the Whole met for better than 24 hours, 22 which seems like -- if that was speeding up the process, 23 then it didn't do a very good job, I guess.</p> <p>24 Q. Is it correct that when bills are assigned to 25 the Committee of the Whole as opposed to State Affairs,</p>	<p style="text-align: right;">68</p> <p>1 Senate in December 2008. It was read and referred to 2 the Committee of the Whole on February 17. It was 3 scheduled and considered for a public hearing on March 4 10th and then passed by the Senate on March 11. Then 5 read a second time on March 17th, read a third time on 6 March 18th, and then reported by the Senate on March 7 18th.</p> <p>8 Q. Thank you. And the lengthy public testimony 9 you're referring to that occurred a period of 24 hours 10 occurred on March 10th; is that correct?</p> <p>11 A. I think that must be right. Testimony taken in 12 committee would likely have been March 10th.</p> <p>13 Q. Was that testimony taken in the Committee of 14 the Whole?</p> <p>15 A. My memory is that yes, it was.</p> <p>16 Q. During the Committee of the Whole's 17 consideration of Senate Bill 362, there were concerns 18 that were raised by the impact of the bill on minority 19 voters, right?</p> <p>20 A. I think that's right.</p> <p>21 Q. Did supporters of Senate Bill 362 take any 22 steps in response to those concerns?</p> <p>23 A. I can't recall specific steps but I do recall 24 that they -- I think I recall that they contested that 25 it would in fact have an adverse impact on minority</p>

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<p style="text-align: right;">69</p> <p>1 voters, so --</p> <p>2 Q. So they -- go ahead.</p> <p>3 A. All right. And so, I'm sure that would inform</p> <p>4 whether they felt the need to take steps.</p> <p>5 Q. So is it your testimony that no changes were</p> <p>6 made to the bill in the Senate as a result of those</p> <p>7 concerns?</p> <p>8 A. I would have to see the different versions of</p> <p>9 the bill through this process to know for sure.</p> <p>10 Q. Did Mr. Dewhurst, to your recollection, take</p> <p>11 any actions in response to the concerns about the impact</p> <p>12 of the bill on minority voters?</p> <p>13 A. Take actions?</p> <p>14 Q. Yes.</p> <p>15 A. I mean, Lieutenant Governor's powers to act on</p> <p>16 a bill once it's before a Committee or the Senate are</p> <p>17 relatively limited. He can't introduce amendments or --</p> <p>18 he's not a bill sponsor. I'm certainly not aware of any</p> <p>19 formal action he took, whether he spoke with Senators or</p> <p>20 the public, I don't know.</p> <p>21 Q. So to your knowledge, Mr. Dewhurst did not take</p> <p>22 any actions in response to these concerns, based on your</p> <p>23 knowledge; is that fair?</p> <p>24 A. I'm not aware of any specific actions he took.</p> <p>25 Q. Did Senator Fraser take any actions in response</p>	<p style="text-align: right;">71</p> <p>1 A. Yes. Statement regarding votes cast by Senator</p> <p>2 West.</p> <p>3 Q. And do you recall generally without -- and I'm</p> <p>4 not asking you to read the entire letter into the</p> <p>5 record, but do you recall generally what this letter</p> <p>6 concerns?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you want to take look at it and tell me when</p> <p>9 you've had a chance to review it.</p> <p>10 A. Okay.</p> <p>11 Q. What does it generally pertain to?</p> <p>12 A. Senator West explains that each of the ethnic</p> <p>13 minority Senators voted against Senate Bill 362 at each</p> <p>14 stage of its passage.</p> <p>15 Q. Were there any responses to this letter that</p> <p>16 you're aware of from supporters of Senate Bill 362?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Are you aware of any responses off the record</p> <p>19 in response to this letter?</p> <p>20 A. I'm not aware of any responses.</p> <p>21 Q. And that's on or off the record?</p> <p>22 A. I -- I don't recall any responses on or off the</p> <p>23 record.</p> <p>24 Q. Are you aware of any concerns that refusal to</p> <p>25 make changes to the bill, to Senate Bill 362, might</p>
<p style="text-align: right;">70</p> <p>1 to any of these concerns raised, that you're aware?</p> <p>2 A. I don't know.</p> <p>3 Q. And overall, were there any changes made to</p> <p>4 Senate Bill 362 at any stage in the bill's history to</p> <p>5 respond to concerns about minority voters?</p> <p>6 A. Again, I would have to see individual copies</p> <p>7 from each state of the process.</p> <p>8 (Exhibit 154 marked for identification.)</p> <p>9 Q. (By Ms. Westfall) You've been handed what's</p> <p>10 been marked as Exhibit 154. Do you recognize this</p> <p>11 document?</p> <p>12 A. It looks like the Senate Journal entry from the</p> <p>13 23rd day of session, which would be March 18, 2009.</p> <p>14 Q. And I believe you just testified that that was</p> <p>15 the day of the final -- the final day of the Senate's</p> <p>16 consideration of Senate Bill 362; is that right?</p> <p>17 A. If I could look at the timeline again. March</p> <p>18 18th was when the Senate reported the engrossed version</p> <p>19 of SB 362.</p> <p>20 Q. That concluded the Senate's consideration of</p> <p>21 Senate Bill 362; is that right?</p> <p>22 A. It sent the bill to the House.</p> <p>23 Q. Thank you. Do you see that on Page 591 of the</p> <p>24 Senate Journal, Exhibit 154, there is a letter from</p> <p>25 Senator West?</p>	<p style="text-align: right;">72</p> <p>1 threaten its preclearance?</p> <p>2 A. Could you repeat, please?</p> <p>3 Q. Certainly. Let me withdraw that question.</p> <p>4 Are you aware of any concerns that refusal</p> <p>5 to make changes to Senate Bill 362 in response to</p> <p>6 concerns about its impact on the minority voters might</p> <p>7 threaten it's preclearance under Section 5?</p> <p>8 A. I don't recall specific concerns or efforts.</p> <p>9 Q. Did the letter from Senator West cause you any</p> <p>10 concern about its likelihood of preclearance under</p> <p>11 Section 5 of the Voting Rights Act?</p> <p>12 A. I can't remember my specific reactions to</p> <p>13 Senator West's statement or that I saw the statement.</p> <p>14 It's possible in the Senate to go back after the day and</p> <p>15 to amend the Journal by submitting a statement. And so</p> <p>16 I'm not sure if Senator West read this or submitted it</p> <p>17 on the day of or submitted it later. But in any case, I</p> <p>18 can't remember my specific reaction.</p> <p>19 Q. Do you recall when you first became aware of</p> <p>20 this letter from Senator West?</p> <p>21 A. I mean, I was aware at the time who voted</p> <p>22 against the bill. I don't know -- I can't recall when I</p> <p>23 became aware of Senator West's statement as laid out in</p> <p>24 the Journal.</p> <p>25 Q. Were you aware of these concerns, generally, at</p>

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19 (Pages 73 to 76)

<p style="text-align: right;">73</p> <p>1 the time Senate Bill 362 was being considered?</p> <p>2 A. My memory is that during the debate before the</p> <p>3 Committee of the Whole, the Senators in opposition</p> <p>4 stated something to this effect.</p> <p>5 Q. Did you have any concerns that -- that those</p> <p>6 objections on the part of bill opponents would create</p> <p>7 any barriers to preclearance under Section 5 of the</p> <p>8 Voting Rights Act?</p> <p>9 A. It would be better if they had all voted for</p> <p>10 it. But I know it's also true that the Democrats, as a</p> <p>11 block, voted against lots of bills over the years,</p> <p>12 including Voter ID. And in this case, he lays out that</p> <p>13 all 12 Democratic Senators voted against the bill, and</p> <p>14 yes, that includes minority Senators. But it -- again,</p> <p>15 I think Democrats voting as a block against bills is --</p> <p>16 it's not unheard of. It's not ideal in most cases, but</p> <p>17 its not unheard of.</p> <p>18 Q. And you didn't see it as a problem in terms of</p> <p>19 preclearance of Senate Bill 362 if that had happened, if</p> <p>20 it had been enacted?</p> <p>21 A. Again, it would have been better if all the</p> <p>22 Senators supported the bill.</p> <p>23 Q. So your answer is no? It was not a hurdle?</p> <p>24 A. I don't recall my immediate impression, but I</p> <p>25 don't think I would have seen it as an insurmountable</p>	<p style="text-align: right;">75</p> <p>1 single person uses every second of time on every single</p> <p>2 bill to delay consideration of other bills or other</p> <p>3 actions, chubbing is the term that's often used.</p> <p>4 Q. And how did opponents of Senate Bill 362 -- how</p> <p>5 did they manage to chub it to death, so to speak?</p> <p>6 A. Me memory from watching it on TV, because I was</p> <p>7 not in the House, is that on other calendars, the major</p> <p>8 State calendars, just one calendar bill the House</p> <p>9 considers is that there were other calendars for that,</p> <p>10 or days before that even, wherein the Democrats -- my</p> <p>11 memory is that it was all Democrats -- spoke at length</p> <p>12 on those procedural or uncontroversial bills to delay</p> <p>13 the consideration of the major State calendar.</p> <p>14 Q. Who -- who was the Speaker at the time that the</p> <p>15 Senate Bill 362 was under consideration?</p> <p>16 A. In 2009 it would have been Joe Straus.</p> <p>17 Q. Could Speaker Straus have assigned the Senate</p> <p>18 bill to a different calendar when it was received in the</p> <p>19 House to ensure its passage?</p> <p>20 A. My understanding is that it's the calendar's</p> <p>21 committee and the Speaker who set the calendars in the</p> <p>22 House.</p> <p>23 Q. Why did he set it for a calendar where it could</p> <p>24 be chubbed?</p> <p>25 A. I don't know. I don't know why he did what he</p>
<p style="text-align: right;">74</p> <p>1 hurdle.</p> <p>2 Q. Senate Bill 362 was not passed by the House; is</p> <p>3 that correct?</p> <p>4 A. I would have to check the bill history.</p> <p>5 Q. Please go ahead and feel free to do so.</p> <p>6 A. Correct.</p> <p>7 Q. Do you know what happened to Senate Bill 362 in</p> <p>8 the House?</p> <p>9 A. It looks like on May 23, 2009, it would have --</p> <p>10 it was placed on the major State calendar. And my</p> <p>11 memory is that there's a fair amount of opposition from</p> <p>12 Democrats in the House, some would say stall tactics.</p> <p>13 They talked at length on bills that normally would have</p> <p>14 been passed as a matter of routine. To delay</p> <p>15 consideration of the bill on the major State calendar,</p> <p>16 it was certainly, again, met with sort of stiff partisan</p> <p>17 opposition in the House. But I can't recall the</p> <p>18 specific details of its demise.</p> <p>19 Q. Is there a term that is used to refer to when</p> <p>20 there's a lot of talking about a bill to stop</p> <p>21 consideration of other bills?</p> <p>22 A. "Chubbing" is the word or term around the</p> <p>23 Capitol that's used, yes. Again, it's -- there's no</p> <p>24 filibuster allowed in the House. They have strict rules</p> <p>25 on the amount of time a person may speak, but if every</p>	<p style="text-align: right;">76</p> <p>1 did.</p> <p>2 Q. Were there other matters the House had to</p> <p>3 attend to in 2009 that were more important than Voter</p> <p>4 ID, in your view, and that's what caused the delay?</p> <p>5 A. I don't recall specific measures being</p> <p>6 considered by the House in 2009.</p> <p>7 Q. If Voter ID -- if Senate Bill 362 had been</p> <p>8 received by the House earlier in the session, would it</p> <p>9 have increased its likelihood of passage?</p> <p>10 A. Generally in the legislature, the earlier a</p> <p>11 chamber considers it, the more likely it is to pass.</p> <p>12 And as to your last question about the</p> <p>13 importance, I think whether a bill is important or which</p> <p>14 bill is more important is decided by each member of the</p> <p>15 House and Senate and varies likely from member to each</p> <p>16 member.</p> <p>17 Q. But there are leaders in each chamber, to be</p> <p>18 fair; isn't that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Not -- not every single member of the House has</p> <p>21 equal weight or say as to what is given legislative</p> <p>22 priority; isn't that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Is it fair to say Speaker Straus has a fair</p> <p>25 amount of sway on which bill is to be heard in the House</p>

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20 (Pages 77 to 80)

<p style="text-align: right;">77</p> <p>1 in 2009?</p> <p>2 A. I would hope so, but I don't know for certain.</p> <p>3 Q. And do you recall the member who sponsored</p> <p>4 Senate Bill 362 in the House?</p> <p>5 A. Senate sponsor?</p> <p>6 Q. The House sponsor. Or who carried in the</p> <p>7 House. I may be using the wrong term.</p> <p>8 A. Looking at the history you provided earlier, it</p> <p>9 looks like Representative Todd Smith was the House</p> <p>10 sponsor.</p> <p>11 Q. And did he have anything to do with what</p> <p>12 calendar Senate Bill 362 was placed on?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know who else besides Mr. Straus would</p> <p>15 have had any involvement in a what calendar Senate Bill</p> <p>16 362 was placed on?</p> <p>17 A. I imagine the Chair of the calendars committee.</p> <p>18 I'm not sure who else.</p> <p>19 Q. Thank you.</p> <p>20 A. And I should say, the major State calendar is</p> <p>21 the most -- generally is the most important bills on any</p> <p>22 given legislative day.</p> <p>23 MS. WESTFALL: I am now going to use an</p> <p>24 exhibit that has been marked as highly confidential.</p> <p>25 I'm going to designate this portion of the transcript as</p>	<p style="text-align: right;">79</p> <p>1 agree I thought the understanding was that supporting</p> <p>2 documents, produced under seal or not, before they were</p> <p>3 used for any purpose, the judge was going to have to</p> <p>4 rule that the Department of Justice move to compel</p> <p>5 admission of the document, the judge would rule on it.</p> <p>6 I guess our concern is if you elicit privileged</p> <p>7 testimony using privileged documents, you're using it.</p> <p>8 So we're not going to call the judge, but this wasn't</p> <p>9 how I expected to proceed.</p> <p>10 MS. WESTFALL: Okay. While I appreciate</p> <p>11 hearing your objections fully stated on the record, it</p> <p>12 is our understanding, based on the judge's ruling, that</p> <p>13 in discovery we able to obtain these documents</p> <p>14 designated as highly confidential. We can now use</p> <p>15 documents produced by this witness that were highly</p> <p>16 confidential in the context of discovery, and that's --</p> <p>17 the judge has deferred a ruling on admissibility of any</p> <p>18 of this until a later time, but we certainly will</p> <p>19 proceed under the Consent Protective Order in terms of</p> <p>20 designation and certainly would not submit any testimony</p> <p>21 elicited or these documents to the court unless it was</p> <p>22 done under seal. Is that acceptable?</p> <p>23 MS. HALPERN: Let me state this. In light</p> <p>24 of what I'm hearing now from defendants with respect to</p> <p>25 an objection, I'm going to assert a continuing objection</p>
<p style="text-align: right;">78</p> <p>1 highly confidential under the Consent Protective Order</p> <p>2 ECF Number 105 in this action.</p> <p>3 Could you mark this?</p> <p>4 (Exhibit 155 marked for identification.)</p> <p>5 MR. WHITLEY: Ms. Westfall, was this</p> <p>6 something that was produced in Texas v. Holder?</p> <p>7 MS. WESTFALL: No, this is was produced</p> <p>8 pursuant to the judge's ruling on legislative privilege</p> <p>9 in Veasey versus Perry. And I am designating it is</p> <p>10 highly confidential. I'm designating the transcript as</p> <p>11 highly confidential mand when I'm done questioning the</p> <p>12 witness on this document, I will terminate that</p> <p>13 designation of highly confidential. I am proceeding</p> <p>14 under the party's agreed upon procedures in the Consent</p> <p>15 Protective Order ECF Number 105.</p> <p>16 MR. WHITLEY: Whether it is the position</p> <p>17 of counsel for defendants that it's not clear what the</p> <p>18 judge has set out for the procedure of introducing</p> <p>19 something -- information like this in the</p> <p>20 deposition. So we're going to object to its</p> <p>21 introduction. I think the way that you're proceeding</p> <p>22 would have to be ruled on later by the judge. We're not</p> <p>23 going to call the judge right now, but we object to</p> <p>24 this.</p> <p>25 MR. D'ANDREA: And I'd like to add, I</p>	<p style="text-align: right;">80</p> <p>1 against -- so as to not interfere with your questions,</p> <p>2 I'm going assert a continuing objection to all questions</p> <p>3 pertaining to this document. And that way you can do</p> <p>4 what you want and the entire piece can be carved out</p> <p>5 should there be a problem. And the court --</p> <p>6 MS. WESTFALL: Thank you. I appreciate</p> <p>7 your streamlining your objections. And just to be</p> <p>8 clear, the objection is on the basis of what privilege</p> <p>9 is?</p> <p>10 MS. HALPERN: Well --</p> <p>11 MS. WESTFALL: Or is it document by</p> <p>12 document?</p> <p>13 MS. HALPERN: In the case of this</p> <p>14 document, it's going to be on the basis of whatever</p> <p>15 privilege was asserted in the privilege log, whatever</p> <p>16 caused the judge to declare in the first instance that</p> <p>17 this needed to be produced and designated as highly</p> <p>18 confidential.</p> <p>19 MS. WESTFALL: I see. Thank you.</p> <p>20 MS. HALPERN: I assume that's legislative</p> <p>21 privilege but I don't know.</p> <p>22 MS. WESTFALL: I think a fair summary of</p> <p>23 the court's ruling is that unless they were otherwise</p> <p>24 withheld on another privilege, which we were not able to</p> <p>25 overcome, then it was withheld on the basis of</p>

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<p style="text-align: right;">81</p> <p>1 legislative privilege. And your being -- the 2 legislators and their staff were required to produce 3 these documents, under the procedures I just described 4 earlier, which is highly confidential in discovery, 5 under seal submitted to the court, and the court will 6 rule on its admissibility at a later date. 7 MS. HALPERN: And I will also note this 8 appears to be predecisional since it's talking points 9 and reasons to support something which would seem to be 10 leading to part of the decision-making process, so I'm 11 going to assert that as well. 12 MS. WESTFALL: I'm not sure whether in 13 fact -- well, I don't believe, based on the logic of the 14 judge's ruling, that this document was withheld on the 15 basis of the legislative privilege and deliberative 16 process because the judge has not issued a ruling on 17 deliberative process in this litigation. 18 MS. HALPERN: Well -- 19 MS. WESTFALL: Therefore, you can make 20 that objection. We would take strong issue with it 21 because this document, which is document -- Exhibit 22 Number 155, TX00087007 through 87013 -- actually 87014, 23 it's a double-sided document -- pertains to Mr. Hebert's 24 activities for the Lieutenant Governor acting in his 25 capacity as leader of the Senate in a legislative</p>	<p style="text-align: right;">83</p> <p>1 still might be an attorney work product privilege 2 though. 3 MS. WESTFALL: Let us proceed having 4 designated this testimony as highly confidential. We'll 5 continue to keep it highly confidential until I indicate 6 that the designation is to be terminated. 7 MS. HALPERN: And with a running 8 objection. 9 MS. WESTFALL: With a running objection. 10 Understood. Thank you, Counsel. 11 Q. (By Ms. Westfall) Turning your attention back 12 to Exhibit 155, Mr. Hebert, do you recognize this 13 document? 14 A. It looks like an e-mail I sent to Janice McCoy 15 for use -- or it says, "For your use as needed," and it 16 is a series of attachments relating to talking points 17 and arguments in support of Senate Bill 362 as well as 18 some overview of various election laws and processes 19 used. 20 Q. And you just described a bunch of -- several 21 attachments to the e-mail to Exhibit 155. Did you draft 22 all those attachments yourself? 23 A. This looks like -- my memory is that, yes, I 24 drafted or at least substantially drafted these 25 documents.</p>
<p style="text-align: right;">82</p> <p>1 capacity and not in an executive capacity which would, 2 perhaps, under some circumstances, give -- give rise to 3 an ability to assert deliberative process. 4 MS. HALPERN: That's correct. And I mean, 5 I would even have a question about whether there was 6 attorney-client privilege here. I don't know the bona 7 fides of this document. I mean, the pages are stapled 8 together but whether, for example the last page, which 9 is clearly a recitation of law, has been stapled to the 10 preceding page but was it in fact part of some sort of 11 legal memorandum, I don't know. But just looking at it 12 on the face of it, you know, as -- as his lawyer, that 13 would give me pause that in fact it actually may have 14 been attorney-client privilege. 15 MS. WESTFALL: Well, I will -- I will 16 direct you to the Bates numbers. I will direct you to a 17 list of the attachments on the cover e-mail, 00087007 18 that refers to these attachments. This communication 19 was between Mr. Hebert and Janice McCoy, who is the 20 staff person for Senator Fraser, therefore, no attorney- 21 client. 22 MS. HALPERN: Well, I would agree with 23 that assuming that -- I will agree -- I will agree with 24 you that if in fact that is the case, the attorney- 25 client privilege is -- is probably a question. There</p>	<p style="text-align: right;">84</p> <p>1 Q. Turning your attention to the date of the 2 e-mail, what is the date of the e-mail? 3 A. March 4, 2009. 4 Q. Was this e-mail sent to Ms. McCoy shortly 5 before the Committee of the Whole's consideration of 6 Senate Bill 362? 7 A. I'd have to refer to the history again. The 8 e-mail is from March 4th and the committee took 9 testimony on March 10th. It was passed after that. So 10 yes, I mean, it was before consideration by the Senate. 11 Q. And several days before; is that correct? 12 A. Correct. 13 Q. When did you draft the attachments to Exhibit 14 155? 15 A. I do not recall. 16 Q. Roughly around the same time as the e-mail? 17 A. I can't recall. It may have been the fall 18 before session. It may have been right before. I can't 19 recall. 20 Q. Do you know why you drafted the attachments? 21 A. For her use as needed. Again, I think to help 22 with passage of the bill by providing outlines of 23 relevant law and arguments to extend to opponents of the 24 bill. 25 Q. Did anyone direct you to draft these</p>

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<p style="text-align: right;">85</p> <p>1 attachments?</p> <p>2 A. I don't recall. I don't think so.</p> <p>3 Q. Did Frank Battle ask you to draft these</p> <p>4 attachments?</p> <p>5 A. I don't recall. I don't think so.</p> <p>6 Q. Did you usually work independently and draft</p> <p>7 things that you thought would be helpful or did someone</p> <p>8 usually tell you to --</p> <p>9 A. Usually I drafted --</p> <p>10 MS. HALPERN: Objection, asked and</p> <p>11 answered.</p> <p>12 Q. (By Ms. Westfall) You may answer.</p> <p>13 A. As it was helpful, I drafted things.</p> <p>14 Q. Did Ms. McCoy ask you for these documents?</p> <p>15 A. I can't recall.</p> <p>16 Q. Did anyone -- concerning all the attachments,</p> <p>17 did anyone provide you with comments or revisions on the</p> <p>18 documents before you sent them to Ms. McCoy?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you provide these attachments to</p> <p>21 Mr. Dewhurst at any time during consideration of 362?</p> <p>22 A. Possibly. I can't be certain but possibly.</p> <p>23 Q. Do you recall which attachments of Exhibit 155</p> <p>24 you provided and shared to Mr. Dewhurst?</p> <p>25 MS. HALPERN: I'm going direct him not to</p>	<p style="text-align: right;">87</p> <p>1 MS. WESTFALL: Solely?</p> <p>2 MS. HALPERN: Deliberative process and</p> <p>3 potentially attorney-client.</p> <p>4 MS. WESTFALL: Okay. Okay. Thank you.</p> <p>5 Q. (By Ms. Westfall) Besides Ms. McCoy, did you</p> <p>6 provide any of these attachments to any of other staff</p> <p>7 for any other Senators?</p> <p>8 A. I can't recall.</p> <p>9 Q. Did you provide them to Senator Williams' staff</p> <p>10 person?</p> <p>11 A. I don't recall. I don't remember Senator</p> <p>12 Williams being particularly involved but I don't know</p> <p>13 for sure.</p> <p>14 Q. Did you provide them to Senator Duncan's staff?</p> <p>15 A. It's possible Jennifer Fagan, as his staff</p> <p>16 person and Chair of State Affairs, may have seen these</p> <p>17 but I can't recall for sure. I mean again, it's five</p> <p>18 years ago.</p> <p>19 Q. Turning your attention to Texas 00087008,</p> <p>20 Reasons to Support Senate Bill 362 as Filed?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Do you see that you indicate that, "Senate Bill</p> <p>23 362 should be supported because that bill is not as</p> <p>24 restricted as the Indiana and Georgia ID bills"?</p> <p>25 A. That's what it says.</p>
<p style="text-align: right;">86</p> <p>1 answer because that would -- that would violate the</p> <p>2 deliberative process privilege to the extent that this</p> <p>3 is giving advice for the forming of an opinion or the</p> <p>4 taking of an action. I think it falls squarely within</p> <p>5 the deliberative process --</p> <p>6 THE COURT REPORTER: You think it's</p> <p>7 falls -- I'm sorry, I'm having trouble hearing you.</p> <p>8 MS. HALPERN: I said to the extent that</p> <p>9 this is giving advice for the forming of an opinion, I</p> <p>10 think it falls squarely within the deliberative process</p> <p>11 privilege. And also, again, depending on the context in</p> <p>12 which these would have been provided to the Lieutenant</p> <p>13 Governor, I -- I think it still constitutes the</p> <p>14 rendering of legal advice.</p> <p>15 MS. WESTFALL: We take issue with your</p> <p>16 objections to the extent that the Lieutenant Governor</p> <p>17 has both executive and legislative functions, and while</p> <p>18 it may be appropriate, based on the positions that the</p> <p>19 legislators have taken in this case to assert</p> <p>20 legislative privilege when they want to, it would be</p> <p>21 impossible to assert both privileges with regard to both</p> <p>22 legislative and deliberative process with regard to</p> <p>23 these sets of documents.</p> <p>24 MS. HALPERN: I'm not asserting</p> <p>25 legislative, I'm asserting deliberative process.</p>	<p style="text-align: right;">88</p> <p>1 Q. And can you tell me what provisions of 362 made</p> <p>2 it less restrictive than the Indiana and Georgia laws?</p> <p>3 A. Well, I think at least the fact that there were</p> <p>4 more acceptable forms of identification. I'm not sure</p> <p>5 what other specifics I might have been -- I had in mind</p> <p>6 here.</p> <p>7 Q. It's fair to say that 362 allowed for the use</p> <p>8 of non-photo ID and the Georgia and Indiana laws did</p> <p>9 not; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. So that would be a major difference between</p> <p>12 Senate Bill 362 and those other bills; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And do you see that in Point Number 2 of</p> <p>15 Reasons to Support Senate Bill 362 as Filed, you</p> <p>16 characterize Senate Bill 362 as a compromised bill?</p> <p>17 A. That's right. And I should say, from looking</p> <p>18 at these and the next page, it appears again these are</p> <p>19 statements intended to garner support for the bill. And</p> <p>20 so, yes, it is characterized as a compromised bill here.</p> <p>21 Q. How -- why is it a compromised bill?</p> <p>22 A. Well, I would say that every bill is</p> <p>23 compromised. In most cases, in the fact that both photo</p> <p>24 and non-photo ID were included is probably one example.</p> <p>25 Q. Are there any other facets of 362 that served</p>

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<p style="text-align: right;">89</p> <p>1 as the basis of your argument that it was a compromise?</p> <p>2 A. Not offhand. I can look at 362 if you'd</p> <p>3 like. And again I say compromised bill, it's, you know,</p> <p>4 my impression is that provisions, additional forms of ID</p> <p>5 for example, were added to the bill in an attempt to</p> <p>6 garner a compromise. But as I mentioned earlier, every</p> <p>7 Democrat still voted against it.</p> <p>8 Q. How did adding forms of ID constitute a</p> <p>9 compromise, in your mind?</p> <p>10 A. I mean, again, I'm -- looking at this, it's</p> <p>11 possible that specific types of ID within the list were</p> <p>12 suggested by other staff or constituents or Senators, I</p> <p>13 can't recall the specifics, but it's likely related to</p> <p>14 the forms of identification.</p> <p>15 Q. And how -- what -- how was this a compromise</p> <p>16 sort of relative to what other form of the bill it could</p> <p>17 have taken?</p> <p>18 A. Well, the bill, I imagine, could have taken any</p> <p>19 form, and I can't recall specific early forms of the</p> <p>20 bill or that it even existed in a form. It could have</p> <p>21 been discussions with people around the Capitol or</p> <p>22 listening to constituents or reading the newspaper or</p> <p>23 reading Crawford or looking at the other state's laws.</p> <p>24 I mean it could be, again, a product of lots of</p> <p>25 different forms of input.</p>	<p style="text-align: right;">91</p> <p>1 for the use of non-photo ID, that would make it less</p> <p>2 likely to disenfranchise these classes of voters?</p> <p>3 MS. HALPERN: Objection, calls for</p> <p>4 speculation.</p> <p>5 Q. (By Ms. Westfall) You may answer.</p> <p>6 A. It's possible. Again, looking at Crawford, you</p> <p>7 know, the court allowed that forms of voter reform will</p> <p>8 often disenfranchise some voters and, you know, if it's</p> <p>9 some minimal number or negligible number, then that</p> <p>10 might be okay if there are other benefits to the law.</p> <p>11 Q. Turning your attention back to what you wrote</p> <p>12 about Senate Bill 362, is it fair to say that you were</p> <p>13 referring to the use of non-photo ID made it -- the bill</p> <p>14 less likely that it would disenfranchise these forms of</p> <p>15 -- these classes of voters?</p> <p>16 A. I can't be sure. I know there are more forms</p> <p>17 of ID certainly as compared to the current law, but I</p> <p>18 don't know if I was specifically referring to photo or</p> <p>19 non-photo. And again, it says at less than a chance.</p> <p>20 It doesn't -- I don't think it acknowledges that people</p> <p>21 will be disenfranchised. It acknowledges the chance of</p> <p>22 disenfranchisement is some percentage less under this</p> <p>23 bill.</p> <p>24 Q. Is it -- were you intending to suggest there</p> <p>25 was less of a chance of disenfranchising elderly, poor</p>
<p style="text-align: right;">90</p> <p>1 Q. But I guess you characterizes it as a</p> <p>2 compromise. There could have been two. What were the</p> <p>3 two sets of extremes that it was a compromise with?</p> <p>4 A. Again, I can't recall what other forms this</p> <p>5 bill existed in through the process, written or not</p> <p>6 written, so I'm not sure what I was referring to here</p> <p>7 five years ago.</p> <p>8 Q. Do you see that in Bullet 1 you write, "There</p> <p>9 is less chance of disenfranchising elderly, poor or</p> <p>10 minority voters"?</p> <p>11 A. Yes, it says that.</p> <p>12 Q. And how did you determine that Senate Bill 362</p> <p>13 would have that effect?</p> <p>14 A. I don't recall specific reason for</p> <p>15 that. Again, other than this document taken as whole</p> <p>16 with the others are intended to be arguments in favor of</p> <p>17 the bill. And, you know, any election reform has a</p> <p>18 chance of disenfranchising voters, and this is evidently</p> <p>19 less chance of disenfranchising voters.</p> <p>20 Q. And what particular provisions in Senate Bill</p> <p>21 362 made it less likely to disenfranchise these classes</p> <p>22 of voters?</p> <p>23 A. Again, I assume it's related to the forms of</p> <p>24 identification that are acceptable.</p> <p>25 Q. So is it fair to say that given that it allowed</p>	<p style="text-align: right;">92</p> <p>1 or minority voters relative to hard-photo ID bills than</p> <p>2 would only permit the use of photo ID?</p> <p>3 A. I don't recall what I was drawing comparison</p> <p>4 to. Different forms of bills is all I can say.</p> <p>5 Q. So you, sitting here today, you can't tell sort</p> <p>6 of what type of bill this was relative to that you were</p> <p>7 referring to in Point 1?</p> <p>8 A. Presumably it refers to a bill with fewer forms</p> <p>9 of acceptable identification but I don't know the sorts</p> <p>10 or I'm not sure exactly what I had in mind at the time.</p> <p>11 And it may have even been that there were other bills</p> <p>12 filed that session that I was referring to, and I don't</p> <p>13 have those other bills.</p> <p>14 I mean, I know throughout this process of</p> <p>15 voter ID over the last however many years it's been,</p> <p>16 there have been people who want this law to go away and</p> <p>17 there have been people who think this law is not</p> <p>18 restrictive enough. It may have been a reference to</p> <p>19 those people -- or bills filed by those people as</p> <p>20 legislators.</p> <p>21 Q. Is it fair to say that without the provision</p> <p>22 allowing use of non-photo ID in Senate Bill 362, that it</p> <p>23 would increase the likelihood of disenfranchisement for</p> <p>24 these groups?</p> <p>25 MS. HALPERN: Objection, calls for</p>

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<p style="text-align: right;">93</p> <p>1 speculation.</p> <p>2 Q. (By Ms. Westfall) You may answer.</p> <p>3 A. It's possible.</p> <p>4 Q. And that's what you were suggesting in the</p> <p>5 talking point; is that correct?</p> <p>6 A. Again, I'm not sure what else I was comparing</p> <p>7 it to. I can't remember what other specific or general</p> <p>8 alternatives I was referring to when I say less of a</p> <p>9 chance. It's also possible I was, you know, giving, you</p> <p>10 know, sort of best case scenarios to the staff to help</p> <p>11 increase passage of the bill.</p> <p>12 Q. But is it fair to say that you had a good faith</p> <p>13 basis and believed the talking points that you were</p> <p>14 writing here --</p> <p>15 A. I would never encourage someone to lie. And</p> <p>16 yeah, I think it's fair to say that this is my good</p> <p>17 faith understanding of what this bill does and does not</p> <p>18 do. Again, I just can't remember what else might have</p> <p>19 been in the -- before the legislature. There may have</p> <p>20 been, you know, bills that were a bit more restrictive</p> <p>21 and that may have been what I was referring to.</p> <p>22 Q. Did you believe that arguing that Senate Bill</p> <p>23 362 would not disenfranchise elderly, poor or minority</p> <p>24 voters would generate support for the bill?</p> <p>25 A. Yes. I don't think anyone in the legislature</p>	<p style="text-align: right;">95</p> <p>1 believed that allowing more forms of ID would decrease</p> <p>2 the bill's discriminatory impact on voters?</p> <p>3 A. Would you repeat?</p> <p>4 Q. Did you write this bullet about preclearance</p> <p>5 because you believed that allowing more forms of ID</p> <p>6 would decrease the bill's discriminatory impact on</p> <p>7 voters?</p> <p>8 A. I believe that this bill, what it says,</p> <p>9 increases the chances of preclearance because it had --</p> <p>10 because of the list of acceptable ID in the bill.</p> <p>11 Q. And the preclearance standard is what?</p> <p>12 A. It was -- under Section 5, preclearance was</p> <p>13 that there was -- the State has the burden or the</p> <p>14 jurisdiction has the burden of proving that there's no</p> <p>15 discriminatory impact or effect on minority populations.</p> <p>16 Q. And here you wrote that Senate Bill 362 is</p> <p>17 something that should be supported because it increases</p> <p>18 chance of federal preclearance because many forms of ID</p> <p>19 are acceptable; is that right?</p> <p>20 A. Right. And again, I don't remember what other</p> <p>21 alternative bills might have been proposed by other</p> <p>22 members of the legislature.</p> <p>23 Q. But certainly Senate Bill 362 was not as</p> <p>24 restrictive as a quote, unquote, hard-photo only Voter</p> <p>25 ID bill, correct?</p>
<p style="text-align: right;">94</p> <p>1 has an interest in disenfranchising elderly, poor or</p> <p>2 minority voters.</p> <p>3 Q. Why do you think that argument needed to be</p> <p>4 made?</p> <p>5 A. I don't know. I think it's just sort of belt</p> <p>6 and suspenders reminding people that this bill will not</p> <p>7 have that effect.</p> <p>8 Q. And is fair to say that at the time you wrote</p> <p>9 these reasons to support Senate Bill 362, that you were</p> <p>10 aware of concerns -- there were concerns out there that</p> <p>11 the bill would adversely impact these groups?</p> <p>12 A. Oh, sure. I mean we knew, you know, Democrats</p> <p>13 in particular opposed this bill before they cast their</p> <p>14 vote, that's true.</p> <p>15 Q. Why did you write that, in Bullet 5, that</p> <p>16 allowing many forms of ID would increase the chance of</p> <p>17 federal preclearance?</p> <p>18 A. I think because it was true. I mean, the</p> <p>19 history of preclearance cases on voter ID showed, you</p> <p>20 know, that the more forms of ID were -- that were</p> <p>21 permissible, the greater the chances of</p> <p>22 preclearance. It doesn't mean they were necessary to</p> <p>23 get preclearance, but I think it's fair to say they</p> <p>24 increased the chances.</p> <p>25 Q. And did you write that bullet point because you</p>	<p style="text-align: right;">96</p> <p>1 A. It was not as restrictive and it was not as</p> <p>2 secure either.</p> <p>3 Q. But it was -- it definitely allowed a broader</p> <p>4 range --</p> <p>5 A. Yes.</p> <p>6 Q. -- of ID including non-photo ID?</p> <p>7 A. Yes.</p> <p>8 Q. And in your view and you were advocating to</p> <p>9 Ms. McCoy, that a reason to support it was this broad</p> <p>10 set of forms of ID could increase the chances of</p> <p>11 preclearance under Section 5; is that right?</p> <p>12 MS. HALPERN: Object to the form, assumes</p> <p>13 facts not in evidence.</p> <p>14 Q. (By Ms. Westfall) You may answer.</p> <p>15 A. I think the point of this document and some of</p> <p>16 the following documents are for supporters of the bill</p> <p>17 in speaking to opponents of the bill to give them things</p> <p>18 to use to garner more support.</p> <p>19 Q. You also allude to the provisional ballot</p> <p>20 procedure in Bullet 5 and you write, "Provisional ballot</p> <p>21 procedure is less burdensome." What did you mean by</p> <p>22 that?</p> <p>23 A. I do not know.</p> <p>24 Q. Is it less burdensome because the voter did</p> <p>25 not, after the election, have to appear -- if the voter</p>

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<p style="text-align: right;">97</p> <p>1 cast a provisional ballot, the voter would not have to 2 go back to the election office to show ID? 3 A. It's possible. 4 Q. And under the Indiana and Georgia laws, the 5 voter would have to come back and show ID if casting a 6 provisional ballot; is that correct? 7 A. I think that's correct. 8 Q. So relative to Indiana and Georgia, Senate Bill 9 362 was less burdensome on voters as to provisional 10 ballots; is that correct? 11 A. I think that's fair. Again, if I could just 12 clarify again: Yes, burdensome. In the earlier 13 deposition you used the word "lenient." You know, it 14 depends on the eye of the beholder, I suppose. But yes, 15 that's generally correct. 16 Q. Turn your attention to the talking points at 17 Texas 00087009. In the second bullet point about 18 protecting Texas voters, was it your view that Senate 19 Bill 362 would accomplish all these goals listed? The 20 five bullets underneath Roman II. 21 A. I hope I believed it would, yes. My memory is 22 that yes, it would in fact. Yes, the threat of fraud is 23 real. Yes, this bill protects Texas voters. And that 24 it attempted some -- it represented some attempt at a 25 compromise. Sure.</p>	<p style="text-align: right;">99</p> <p>1 A. I believe that's correct. 2 Q. The provisional ballot voter would not be 3 required to appear at the County election office; is 4 that right? 5 A. That's correct. 6 Q. And under Senate Bill 14, a voter without 7 requisite ID on election day would cast a provisional 8 ballot and then need to return to the election office 9 with qualifying ID in order for their ballot to be 10 counted; is that correct? 11 A. If the reason for the provisional ballot is 12 that they did not have acceptable ID, then yes, they 13 have the opportunity to go confirm that after the voting 14 on election day. 15 Q. And indeed, if they did not confirm, that their 16 ballot would not be counted? 17 A. I believe that's correct. 18 Q. Turning your attention now to Texas 00087011. 19 A. Okay. 20 Q. Actually strike that. 21 Turning your attention to 00087014, the 22 last page of Exhibit 155, Process for Obtaining a Texas 23 Birth Certificate. When Senate Bill 362 was under 24 consideration, did you consider the cost of obtaining 25 photo IDs required under that law -- bill?</p>
<p style="text-align: right;">98</p> <p>1 Q. But you're -- you were arguing that the Senate 2 Bill 362 would accomplish the goals in Roman II; is that 3 correct? 4 A. Yes. 5 Q. And in other words, Senate Bill 362, which 6 allowed for the use of photo and non-photo ID, would 7 accomplish these five goals, correct, under Roman II? 8 A. Correct. It doesn't say that this is the only 9 bill that will protect Texas voters, but yes, it does 10 say this bill will protect Texas voters. 11 Q. We talked a little bit about the provisional 12 ballot process under Senate Bill 362. It would not 13 alter the status quo -- 14 A. I believe -- 15 Q. -- of provisional ballot processing, to the 16 best of your recollection? 17 A. I believe that's correct. 18 Q. Under Senate Bill 362, voters without 19 qualifying ID could cast a provisional ballot; isn't 20 that right? 21 A. Yes. As they can today. 22 Q. And the County Ballot Board would then check 23 their records and look at the ballot envelope and 24 determine whether to count based on their own review of 25 records of that ballot; is that correct?</p>	<p style="text-align: right;">100</p> <p>1 A. Looking at this page, it is clear that I 2 considered it. Again, I was not a bill sponsor. 3 Q. Did you -- or your office conduct research on 4 the cost of documents like birth certificates required 5 to obtain an ID? 6 A. I don't recall. 7 Q. Does looking at Texas 00087014 refresh your 8 recollection as to whether you undertook or someone in 9 your office undertook research on the cost of birth 10 certificates in Texas? 11 A. It's clear from this document that birth 12 certificates were considered. Each of the 1, 2, 3 and 4 13 on that page mention birth certificates. I can't recall 14 if I -- I would have been the one that did it, likely, 15 and I can't remember if I looked specifically at cost or 16 if I looked at birth certificates generally. 17 Q. Do you know why you focused on the cost of 18 birth certificates? 19 A. I don't know that I focused on the cost of 20 birth certificates. I think I looked at the 21 availability of birth certificates, looking at this 22 document. 23 Q. Do you know why you looked at the availability 24 of birth certificates as opposed to other forms of 25 identification?</p>

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<p style="text-align: right;">101</p> <p>1 A. I think likely that birth -- I mean, I think 2 birth certificates are one of the more common methods of 3 obtaining other types of identification and so I looked 4 into how one goes about getting copies of birth 5 certificates. 6 Q. And does this document here, Process for 7 Getting Copy Of Texas Birth Certificate, indicate that 8 it will cost \$22 at least to get a birth certificate? 9 A. That's what I put as of 2009. That was -- I 10 assume -- I hope I got that correct. 11 Q. And that to get a birth certificate for \$22 as 12 opposed to 43 or 38, the applicant would have to appear 13 in person at Vital Statistics or another site or have 14 access to the Internet? 15 A. To pay the \$22, they would have to appear in 16 person or have access to the Internet, as you could get 17 at most any library, including in 2009. 18 Q. At the time SB 362 was under consideration, was 19 Janice McCoy also focused on the issue of the cost of 20 obtaining a birth certificate? 21 A. I don't know what Janice was focused on. 22 Q. Did you -- do you recall any conversations with 23 her about that? 24 A. I don't recall, but I sent her this. So if she 25 wasn't before, then presumably she was aware after.</p>	<p style="text-align: right;">103</p> <p>1 voter ID. 2 Q. And has it been across several legislative 3 sessions that she's held this interest? 4 A. I think that's correct. 5 Q. Do you know why Ms. Riddle was not selected to 6 carry either Senate Bill 14 or Senate Bill 362 in the 7 House? 8 A. I don't know. That's a decision that's made in 9 the House. 10 Q. Do you know whether it has anything to do with 11 anything that she has said publicly related to 12 immigration? 13 A. I don't know. 14 Q. Was Senate Bill 14 filed in November 2010 in 15 the Senate? 16 A. I don't recall when it was filed. 17 MS. WESTFALL: Could you mark this 156? 18 (Exhibit 156 marked for identification.) 19 MS. WESTFALL: I'm going to designate this 20 portion of the deposition as highly confidential because 21 we are -- I'm again going to use a document that has 22 been produced that has been designated as highly 23 confidential. 24 Q. (By Ms. Westfall) Mr. Hebert -- 25 (Brief discussion off the record.)</p>
<p style="text-align: right;">102</p> <p>1 MS. HALPERN: Counsel, we've been going 2 another hour and I need a break. 3 MS. WESTFALL: Okay. Certainly. Let's 4 take a break. I'm done with the document. Let's take a 5 break. 6 (Recess 11:26 a.m. to 11:39 a.m.) 7 Q. (By Ms. Westfall) Okay. We were -- you were 8 last discussing testifying about Exhibit Number 155, 9 which had been your testimony about that document had 10 been designated as highly confidential. I want to 11 terminate or suspend that designation now, because I 12 want to ask you questions that don't pertain to that 13 document or other documents that have been designated as 14 highly confidential. 15 A. Okay. 16 Q. I believe you testified that Todd Smith was the 17 house sponsor of Senate Bill 362 in 2009? 18 A. Correct. 19 Q. And who was the House sponsor of Senate Bill 20 14? 21 A. I believe it was Representative Harless. There 22 may have been additional sponsors. 23 Q. Do you recall that Representative Debbie Riddle 24 had strong interest in voter ID? 25 A. I know that she has always had an interest in</p>	<p style="text-align: right;">104</p> <p>1 Q. (By Ms. Westfall) So you've been handed what's 2 been marked as 156. Do you recognize what this document 3 is? 4 A. It looks like an e-mail from Janice McCoy to 5 various Senate staff with an attachment of a draft of 6 voter ID bill. 7 MS. WESTFALL: For the record, Exhibit 8 Number 156 is Texas 00090532 through Texas 00090543. 9 Q. (By Ms. Westfall) Do you see that you were 10 copied on the e-mail? 11 A. Yes. 12 Q. Do you see the date of the e-mail? 13 A. Well, it's two e-mails. The first one, 14 November 8th, and the second on November 9th. 15 Q. Did you know before you received this e-mail 16 that Senator Fraser would be filing a Voter ID bill? 17 A. My memory is that he had -- or his staff had 18 already expressed an interest in refiling Voter ID 19 legislation. 20 Q. Senator Fraser had been the sponsor of Senate 21 Bill 362; is that correct? 22 A. Correct. 23 Q. And you knew in advance of this date, November 24 2010, that he would be refiling a Voter ID bill; is that 25 right?</p>

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<p style="text-align: right;">105</p> <p>1 A. Yes.</p> <p>2 MR. WHITLEY: Ms. Westfall, very quickly,</p> <p>3 and I'm sorry for interrupting. Is this -- and I may</p> <p>4 have misheard. Is this portion of the testimony also</p> <p>5 designated --</p> <p>6 MS. WESTFALL: Yes.</p> <p>7 MR. WHITLEY: -- as highly confidential?</p> <p>8 MS. WESTFALL: I -- I hope I designated it</p> <p>9 as highly confidential.</p> <p>10 MR. WHITLEY: And this is a document that</p> <p>11 was produced pursuant to the protective order?</p> <p>12 MS. WESTFALL: Yes.</p> <p>13 MR. WHITLEY: And it was produced as</p> <p>14 production from the last case pursuant to the court's</p> <p>15 order to produce those documents from the last case?</p> <p>16 MS. WESTFALL: Yes.</p> <p>17 MR. WHITLEY: So the defendants are to</p> <p>18 going have the same objection about this document as we</p> <p>19 did before.</p> <p>20 MS. WESTFALL: Yes.</p> <p>21 MR. WHITLEY: Okay.</p> <p>22 MS. WESTFALL: Thank you.</p> <p>23 Q. (By Ms. Westfall) So originally, as indicated</p> <p>24 in the subject line, the Voter ID bill he filed in</p> <p>25 November 2010 received a bill number of Senate Bill 178;</p>	<p style="text-align: right;">107</p> <p>1 A. I might have been. I cannot recall the</p> <p>2 specifics of the meeting.</p> <p>3 Q. Do you see -- could you review that paragraph</p> <p>4 starting, "After late discussion with Lieutenant</p> <p>5 Governor's office," and let me know when you're done?</p> <p>6 A. Okay.</p> <p>7 Q. Could you indicate in your own words what it</p> <p>8 describes?</p> <p>9 A. That someone, in looking at it now, it probably</p> <p>10 was me, suggested that having voter registration fraud</p> <p>11 provisions and a voter identification bill might present</p> <p>12 a two-subject problem, which is a parliamentary --</p> <p>13 or constitutional restriction that any one bill can only</p> <p>14 contain one subject.</p> <p>15 Q. So was it your advice and recommendation that</p> <p>16 Section 18 be removed from the bill?</p> <p>17 A. I assume it was my recommendation.</p> <p>18 Q. Could you refer me to the constitutional</p> <p>19 provision that creates the two-subject rule?</p> <p>20 A. I don't know the number.</p> <p>21 Q. And again, Section 18 of this previous</p> <p>22 iteration of the bill would have violated the</p> <p>23 two-subject rule for what reason?</p> <p>24 A. It's possible that if a bill contained both</p> <p>25 requirements for acceptable Voter ID voting at polls and</p>
<p style="text-align: right;">106</p> <p>1 is that right?</p> <p>2 A. I'm not sure. I guess so. According to this</p> <p>3 e-mail, yes.</p> <p>4 Q. And the bill number was later changed to Senate</p> <p>5 Bill 14; is that correct?</p> <p>6 A. Correct. Again, I'm not sure that it's the</p> <p>7 exact same bill, but that might be correct.</p> <p>8 Q. Assuming it is the same bill, do you know why</p> <p>9 the change in numbering was made?</p> <p>10 A. I don't know. Typically, low bill numbers are</p> <p>11 priorities of the Lieutenant Governor and the Senate.</p> <p>12 Q. Do you know whether Senator Fraser was asked to</p> <p>13 refile so that he could be designated with a low bill</p> <p>14 number?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know whether Mr. Dewhurst asked him to</p> <p>17 do that?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you see that the e-mail, the second e-mail</p> <p>20 dated November 8th on Page 90532, alludes to a</p> <p>21 discussion with the Lieutenant Governor's office --</p> <p>22 A. Yes.</p> <p>23 Q. -- in Paragraph 2?</p> <p>24 A. (Witness nods head yes.)</p> <p>25 Q. Were you part of that meeting?</p>	<p style="text-align: right;">108</p> <p>1 provisions relating to punishment of voter registration</p> <p>2 fraud, that a House parliamentary or a Senate</p> <p>3 parliamentary or a court after the fact could decide</p> <p>4 that those two things were not one subject. And to, you</p> <p>5 know, to avoid that concern, it was probably safer to</p> <p>6 remove that provision.</p> <p>7 Q. Do you know whether any other changes were made</p> <p>8 to the draft besides the one you just testified to as a</p> <p>9 result of your meeting with Ms. McCoy?</p> <p>10 A. I don't recall.</p> <p>11 Q. Turning to the bill itself --</p> <p>12 A. Can I?</p> <p>13 Q. Go ahead.</p> <p>14 A. To clarify, I don't know that if it was even a</p> <p>15 meeting. It says a discussion. It may have been a</p> <p>16 phone call.</p> <p>17 Q. Do you recall whether any other changes to the</p> <p>18 bill occurred during that discussion?</p> <p>19 A. I don't recall.</p> <p>20 Q. Turning to the bill attached to Exhibit 156, it</p> <p>21 appears -- if you could take a look at the bill, that</p> <p>22 there was no exemption from the ID requirements for</p> <p>23 voters over the age of 70; is that correct?</p> <p>24 A. I do not see an exemption.</p> <p>25 MS. WESTFALL: Could you mark this</p>

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<p style="text-align: right;">109</p> <p>1 document as Exhibit 157?</p> <p>2 (Exhibit 157 marked for identification.)</p> <p>3 Q. (By Ms. Westfall) You've been handed what's</p> <p>4 been marked as Exhibit 157. Do you recognize this</p> <p>5 document?</p> <p>6 A. It's an e-mail from myself to a Senate staffer</p> <p>7 relating to Voter ID bill.</p> <p>8 Q. Preliminary question: Why did you copy</p> <p>9 yourself, Bryan Hebert to Bryan Hebert, this e-mail?</p> <p>10 A. It's possible I did that just as a sort of</p> <p>11 bookkeeping for myself to put it into one folder in my</p> <p>12 archive system. But you can see at the bottom it's got</p> <p>13 my deputy general counsel signature, which would only</p> <p>14 have come from my state account.</p> <p>15 Q. Thank you. Who is Noe Barrios?</p> <p>16 A. Noe Barrios is I believe now chief of staff for</p> <p>17 Senator Estes. I'm not sure what his title was in 2011.</p> <p>18 Q. What is the party affiliation of Senator Estes?</p> <p>19 A. He's a Republican.</p> <p>20 Q. What were the concerns about SB 14's compliance</p> <p>21 with the Voting Rights Act that are expressed by</p> <p>22 Mr. Barrios?</p> <p>23 A. I don't know. It says here that -- it looks</p> <p>24 like Blaine Brunson, the chief of staff for the</p> <p>25 Lieutenant Governor, had a conversation with Senator</p>	<p style="text-align: right;">111</p> <p>1 Q. So how did you believe that discussing the</p> <p>2 Crawford case would be responsive to the concerns of</p> <p>3 Mr. Barrios and his boss?</p> <p>4 A. I don't remember for sure today. I would say</p> <p>5 that if the Supreme Court approved an election change or</p> <p>6 election program in a state, that's certainly better</p> <p>7 than if they did not approve it in terms of whether it</p> <p>8 would pass preclearance.</p> <p>9 Q. So in measures required to offset burdens on</p> <p>10 voters, do you see that at Roman II?</p> <p>11 A. Yes.</p> <p>12 Q. You mentioned availability of provisional</p> <p>13 ballots and absentee ballots, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And under Senate Bill 14, if a voter casts</p> <p>16 provisional ballot, that voter for -- for not -- for</p> <p>17 lack of acceptable photo ID, the voter would have to</p> <p>18 return with acceptable photo ID in order for that ballot</p> <p>19 to be counted, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So how does the availability of provisional</p> <p>22 ballots under Senate Bill 14 offset burden to voters?</p> <p>23 A. Because the voter is not turned away outright.</p> <p>24 If they show up at the polls with no ID, they're not</p> <p>25 just told too bad. They're allowed to cast a</p>
<p style="text-align: right;">110</p> <p>1 Estes, and in that conversation concerns were raised. I</p> <p>2 don't recall the specific -- of whether Blaine relayed</p> <p>3 the specifics of those concerns or whether he just said</p> <p>4 Senator Estes wants to make sure this passes and is</p> <p>5 precleared.</p> <p>6 Q. So you provided information about Crawford and</p> <p>7 the Indiana law in response to these concerns, correct?</p> <p>8 A. That looks to be correct.</p> <p>9 Q. Why did you provide information about Indiana's</p> <p>10 photo ID law in response to concerns about Senate Bill</p> <p>11 14 under the Voting Rights Act?</p> <p>12 A. I think it was -- looks like it was a separate</p> <p>13 point, I said, you know, the good news is that U.S.</p> <p>14 Supreme Court has upheld a similar law in Indiana, and I</p> <p>15 don't believe -- you know, I think the Crawford decision</p> <p>16 is relevant to the discussion of whether Voter ID laws</p> <p>17 will be upheld. It's not a preclearance process, but it</p> <p>18 is relevant.</p> <p>19 Q. And Crawford would be relevant to</p> <p>20 constitutional challenges against Voter ID; is that</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. But Crawford is not -- doesn't -- Crawford was</p> <p>24 not a statutory.</p> <p>25 A. It's not a Section 5 ruling.</p>	<p style="text-align: right;">112</p> <p>1 provisional ballot, and they're further given an</p> <p>2 opportunity to appear with acceptable ID and have that</p> <p>3 the ballot counted.</p> <p>4 Q. So under -- are you familiar with the Help</p> <p>5 America Vote Act?</p> <p>6 A. Yes.</p> <p>7 Q. And doesn't the Help America Vote Act require</p> <p>8 that no voter, under any circumstance, can be turned</p> <p>9 away from the polls and is permitted to vote a</p> <p>10 provisional ballot?</p> <p>11 A. I'll take your word for it.</p> <p>12 Q. So how does -- assuming that to be the case,</p> <p>13 how does Senate Bill 14 offset burden to voters if it's</p> <p>14 already provided for in federal law?</p> <p>15 A. I assume by -- at least by providing a clear</p> <p>16 mechanism and by ensuring that the secure measures in</p> <p>17 place at the polls are continued through the provisional</p> <p>18 ballot process and providing guidance through election</p> <p>19 workers and election clerks on how to handle such</p> <p>20 requests so that they're not mishandled.</p> <p>21 Q. And on -- where you have Roman III, measures</p> <p>22 recommended to offset burdens on voters, you mention an</p> <p>23 exception for certain elderly voters. Why did you raise</p> <p>24 the issue of elderly voters in response to concerns</p> <p>25 about the Voting Rights Act?</p>

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<p style="text-align: right;">113</p> <p>1 A. I can't recall.</p> <p>2 Q. And elderly voters are not the protected class</p> <p>3 of voters that are at issue in the Voting Rights Act,</p> <p>4 correct?</p> <p>5 A. Correct. Although, again, if I'm referencing</p> <p>6 constitutional law, making sure all classes of voters</p> <p>7 are treated the same way would increase the chances of</p> <p>8 success before a court.</p> <p>9 Q. So it's more of an equal protection concern and</p> <p>10 less of a Voting Rights Act concern; is that correct?</p> <p>11 A. Possibly.</p> <p>12 Q. Insofar as -- well, okay. Did Mr. Barrios</p> <p>13 respond to your e-mail?</p> <p>14 A. I don't recall.</p> <p>15 MS. WESTFALL: I'm going to terminate the</p> <p>16 highly confidential designation right now.</p> <p>17 Q. (By Ms. Westfall) Did you hear of any other</p> <p>18 concerns about Senate Bill 14's compliance with the</p> <p>19 Voting Rights Act at this period in time?</p> <p>20 A. In --</p> <p>21 MS. HALPERN: Objection, vague.</p> <p>22 A. In January of 2011, we would have been in</p> <p>23 session, and I assume I did hear objections from</p> <p>24 opponents of the bill.</p> <p>25 Q. (By Ms. Westfall) Were there any concerns</p>	<p style="text-align: right;">115</p> <p>1 A. Sure.</p> <p>2 Q. And sitting here today, do you recall anything</p> <p>3 about that conversation?</p> <p>4 A. I don't. It's three years ago, two years since</p> <p>5 my last deposition.</p> <p>6 MS. WESTFALL: Counsel, let's go off the</p> <p>7 record for a second.</p> <p>8 (Brief discussion off the record.)</p> <p>9 (Exhibit 158 marked for identification.)</p> <p>10 Q. (By Ms. Westfall) You've been handed what's</p> <p>11 been marked as Exhibit 158. It is TX0003456.</p> <p>12 MS. HALPERN: Counsel, if you don't mind</p> <p>13 some unsolicited advice, let me suggest that rather than</p> <p>14 discussing the contents of this, which would require you</p> <p>15 to make this portion of the deposition confidential,</p> <p>16 without describing it, why don't you just ask him if</p> <p>17 he --</p> <p>18 MS. WESTFALL: Sure.</p> <p>19 Q. (By Ms. Westfall) Do you know what this is?</p> <p>20 A. It looks like talking points for DHD, which</p> <p>21 would be David Dewhurst, Call to Members Voter ID</p> <p>22 Timeline and Procedures.</p> <p>23 Q. Did you draft this?</p> <p>24 A. I don't think I did.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">114</p> <p>1 about SB 14's compliance with the Voting Rights Act from</p> <p>2 senators who later voted for the bill?</p> <p>3 A. I don't recall. It's three years ago.</p> <p>4 Q. Governor Perry designated the issue of Voter ID</p> <p>5 as emergency legislation, correct?</p> <p>6 A. I think that's correct.</p> <p>7 Q. And you had a conversation with Janice McCoy</p> <p>8 about the designation of Voter ID as emergency</p> <p>9 legislation, correct?</p> <p>10 A. I may have. I don't remember specific</p> <p>11 conversation about that designation. Certainly after</p> <p>12 the fact we would have talked about it.</p> <p>13 Q. But you don't recall what was said at that</p> <p>14 conversation?</p> <p>15 A. I don't recall.</p> <p>16 Q. Just the existence of the conversation?</p> <p>17 A. I'm not even sure that we actually had that</p> <p>18 conversation. I would not be surprised if we talked</p> <p>19 about the emergency designation after it happened.</p> <p>20 Q. I'll represent to you that in your prior</p> <p>21 deposition you testified to the existence of a</p> <p>22 conversation --</p> <p>23 A. Okay.</p> <p>24 Q. -- with Ms. McCoy about the emergency</p> <p>25 designation.</p>	<p style="text-align: right;">116</p> <p>1 A. And I -- I don't remember drafting it for sure,</p> <p>2 but just as a practical matter, the ID in the first</p> <p>3 line, I would never have done it lower case.</p> <p>4 Q. Fair point.</p> <p>5 A. And this also seems more sort of personal in</p> <p>6 nature. It's not the style I would have written in</p> <p>7 either.</p> <p>8 Q. Do you know whether -- putting aside document 1</p> <p>9 -- the Exhibit 158, do you know whether Mr. Dewhurst</p> <p>10 called all members about consideration of Senate Bill</p> <p>11 14?</p> <p>12 A. I don't recall. I don't -- I don't remember</p> <p>13 any firsthand knowledge for sure.</p> <p>14 Q. Do you have any idea who drafted this document?</p> <p>15 A. I don't.</p> <p>16 Q. Do you think Mr. Dewhurst himself drafted this</p> <p>17 document?</p> <p>18 A. I don't know.</p> <p>19 Q. Would Frank Battle or Julia Rathgeber or Blaine</p> <p>20 Brunson had drafted this document?</p> <p>21 A. In 2011, Frank Battle would have been -- let's</p> <p>22 see if I remember -- I don't know. I don't know. It</p> <p>23 could have been any of them. It could have been the</p> <p>24 Lieutenant Governor himself, but that seems unlikely.</p> <p>25 Q. Do you know why Mr. Dewhurst would have</p>

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<p style="text-align: right;">117</p> <p>1 indicated to members that he wanted to move this bill, 2 that is Senate Bill 14, as expeditiously as possible? 3 A. I don't know. Considering that Governor Perry 4 designated it an emergency, that might be one reason. 5 Q. Do you know why he would have wanted to get 6 consideration of Voter ID out of the way before 7 considering some of the other issues mentioned in this 8 document such as budget, imminent domain, border 9 security and, quote, "other pressing issues," end quote? 10 A. Again -- 11 MS. HALPERN: Objection, calls for 12 speculation. 13 A. I don't know. Again, I would guess that since 14 the Governor considered it an emergency, that that means 15 it warranted some attention. 16 Q. (By Ms. Westfall) Do you see that these 17 talking points indicate at Exhibit 158 that the Senate 18 would meet the following week as long as it took to get 19 Voter ID done, in essence? 20 A. Yes. 21 Q. Do you know why those steps were taken with 22 regard to this bill? 23 A. I don't know. 24 Q. Do you know why, other than what you just 25 testified to in terms of emergency designation, it was</p>	<p style="text-align: right;">119</p> <p>1 A. My memory is there have been a number of 2 emergency issues over those years. I cannot recall 3 which specific bills were passed during the first week 4 or the first month or the first 60 days of session. 5 Q. Do you know what subject matter they were? 6 A. You know, I can't remember. I know -- I should 7 know, but I know there have been a number of them that 8 have been emergencies, but I can't remember. And I 9 should also say that it's possible for the Senate to 10 vote to suspend those rules to do so, and I can't 11 remember if that has happened or not. 12 Q. Do you see in terms of the date of this 13 document that it starts off, "Today Governor Perry 14 designated Voter ID as an emergency"? 15 A. Yes. 16 Q. Does that suggest to you a certain date when 17 this document was drafted? 18 A. Probably the date that the designation was 19 made. I don't know when this was distributed or when he 20 might have met with the senators as indicated here. 21 Q. Do you recall that Governor Perry designated 22 Voter ID as an emergency on January 20 of 2011? 23 A. I don't recall the date, but I assume that's 24 correct. 25 Q. Would it be in the legislative history on</p>
<p style="text-align: right;">118</p> <p>1 moved so expeditiously through the Senate? 2 A. I don't know. Again, I could guess that given 3 the vocal opposition from Democrats, that he expected a 4 fight. And as I said earlier, the earlier in the 5 process you start on controversial or contentious bills, 6 the better, in terms of getting it passed. It may have 7 been some other reason. Maybe the Speaker requested it 8 or maybe the Governor requested it. I don't know. 9 Q. Are you aware of other kind of substantive 10 bills that were pushed through the first week of session 11 in the January, to your knowledge? 12 A. I don't recall what else might have been an 13 emergency. The Senate rules and the Legislature's rules 14 prohibit consideration of certain types of bills during 15 certain points in the Senate. It may have been that 16 this was the only bill we could consider that early in 17 session. I don't know. And I don't know when this was 18 drafted exactly either. 19 Q. Putting aside 2011, since you were in the 20 Senate working as a staff person since 2007; is that 21 correct, 2007? 22 A. Sadly, yes. 23 Q. Are you aware of any other substantive bills 24 that were pushed through the Senate in the first week of 25 session in January?</p>	<p style="text-align: right;">120</p> <p>1 Senate Bill 14 or no? 2 A. The emergency designation, I don't believe 3 would be. It would be a proclamation from the 4 Governor's office and would likely have been read on the 5 floor of the Senate and therefore be in the Senate 6 Journal. 7 Q. Do you see that on document Exhibit Number 158, 8 it indicates that it would be in the Senate's best 9 interest to complete work on Voter ID before focusing on 10 these other issues listed? 11 A. Yes. 12 Q. Four paragraphs down. 13 A. It says that -- 14 MS. HALPERN: I'm sorry. I should have 15 interposed a running objection, and I apologize. I said 16 it was okay for you to ask him if he authored it. He 17 says he didn't. And now we have a whole line of 18 continuing questions about this highly confidential 19 document. So with your indulgence, because I think 20 we're having bilateral cooperation here, I want to go 21 back and assert a running objection starting from every 22 question after he says he didn't author this. 23 MS. WESTFALL: Certainly. Certainly. 24 Q. (By Ms. Westfall) Are you aware of any facts, 25 factual support, need for such prompt and expeditious</p>

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<p style="text-align: right;">121</p> <p>1 consideration of Senate Bill 14 before other legislative 2 priorities? 3 A. I'm not sure what the Governor considered in 4 making the designation. 5 Q. But the sole -- your sole -- your testimony is 6 that it was solely -- your understanding was it was the 7 Governor's designation of this bill as an emergency is 8 the sole factual support for why it was pushed so 9 expeditiously in the Senate in January -- 10 MS. HALPERN: Objection. 11 Q. (By Ms. Westfall) -- is that correct? 12 MS. HALPERN: Assumes facts not in 13 evidence. 14 Q. (By Ms. Westfall) You may answer. 15 A. I don't know is the short answer. I know this 16 was a priority of Lieutenant Governor Dewhurst and of 17 many senators. And it was clearly deemed an emergency 18 by the Governor. And all that together seems enough to 19 call expeditious -- expediting the process. 20 Q. Other than what you just testified to, there 21 are no other facts that warranted such prompt 22 consideration of Senate Bill 14; is that right? 23 A. Again, the same that I mentioned earlier, the 24 desire to actually have it passed this time. This was 25 now the third or fourth or fifth session that it had</p>	<p style="text-align: right;">123</p> <p>1 document? 2 A. It looks like a press release from the 3 Lieutenant Governor's office. 4 Q. What is it concerning? 5 A. The Governor Perry emergency call. 6 Q. Do you see the date of the release? 7 A. Yes. 8 Q. What is the date? 9 A. January 20, 2010. 10 Q. And when was this -- what does it refer to in 11 terms of when the emergency designation was made? 12 A. "Today." 13 Q. So, therefore, the emergency designation was 14 January 20th; is that correct? 15 A. I assume that's true. 16 Q. Do you see that -- turning your attention to 17 the last paragraph of this release, do you see that it 18 refers to the need to protect one man, one vote? 19 A. It says, "One person, one vote," yes. 20 Q. One person, one vote. Do you know what was 21 meant by that? 22 A. I mean, I just -- generally that each vote 23 shall count if cast by an eligible voter and not be 24 offset by a vote cast by an ineligible voter. 25 Q. Was there a threat to the principle of one</p>
<p style="text-align: right;">122</p> <p>1 been attempted to be passed. And on multiple occasions, 2 had run out of time or procedural obstacles had been 3 placed in its way that stopped it. So if nothing else, 4 to get it done. 5 MS. WESTFALL: I'm going to terminate the 6 highly confidential designation right now. 7 MS. HALPERN: When do you plan to stop for 8 lunch? 9 MS. WESTFALL: I'm open. 10 MS. HALPERN: Well, I'm assuming you've 11 got hours and hours to go before you sleep? 12 MS. WESTFALL: I have hours and hours to 13 go before I sleep. I have -- I have a bunch of short 14 exhibits to go through, so we're going to be here all 15 day as you -- it's 12 noon. 16 MS. HALPERN: What do you want to do? 17 MS. WESTFALL: I'm open. 18 THE WITNESS: Maybe another half hour and 19 then break? 20 MS. WESTFALL: Okay. 12:30 is a good time 21 for lunch. Okay. I'm going to -- could you please mark 22 this? 23 (Exhibit 159 marked for identification.) 24 Q. (By Ms. Westfall) You've just been handed 25 what's been marked as 159. Do you recognize this</p>	<p style="text-align: right;">124</p> <p>1 person, one vote, that Voter ID was intended to remedy? 2 A. Yes. 3 Q. Can you explain that? 4 A. In my judgment, as I just said, if an eligible 5 voter casts a vote, that vote is counted. If an 6 ineligible voter casts a fraudulent vote, that has the 7 effect of eliminating or offsetting an eligible vote, 8 and therefore, is a threat to the principle of one 9 person, one vote. 10 Q. And what was the basis for the need of ensuring 11 one person, one vote through Voter ID, other than what 12 you've just testified to? 13 A. I think that's enough. I think there's lots of 14 -- 15 Q. Principle. 16 A. There are lots of ways to protect that 17 principle in Voter ID. This Voter ID legislation was 18 one. 19 Q. And do you see it alludes to uphold the 20 integrity of elections? 21 A. Yes. 22 Q. Why was there a need to uphold the integrity of 23 elections through Voter ID? 24 A. Again, I think accounts of various types of 25 fraud have been well-documented in Texas and other</p>

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<p style="text-align: right;">125</p> <p>1 jurisdictions, and this attempt to decrease that fraud</p> <p>2 has the effect of upholding the integrity of our</p> <p>3 elections so that you can be sure that the person who</p> <p>4 got the most eligible votes is the person that was</p> <p>5 elected.</p> <p>6 Q. Were there indications that existing Voter ID</p> <p>7 law in Texas had failed to protect the integrity of the</p> <p>8 elections?</p> <p>9 A. I'm sure there were examples that I --</p> <p>10 specifics of which escape me now, but yes, like I said,</p> <p>11 there's been examples of fraud throughout Texas's</p> <p>12 history. This was one -- intended to be one step</p> <p>13 towards curbing that fraud and curbing fraud in general.</p> <p>14 Q. And by voter fraud, you mean voter fraud</p> <p>15 generally and not limited to in-person voter</p> <p>16 impersonation; is that correct?</p> <p>17 A. The bulk of this voter -- SB 14, as I saw it,</p> <p>18 was intended to stop in-person voter fraud, but as I</p> <p>19 discussed earlier, I think the potential impact of that</p> <p>20 is much broader.</p> <p>21 MS. WESTFALL: Can you mark this?</p> <p>22 (Exhibit 160 marked for identification.)</p> <p>23 Q. (By Ms. Westfall) You've been handed what's</p> <p>24 been marked as Exhibit 160. Do you recognize this</p> <p>25 document?</p>	<p style="text-align: right;">127</p> <p>1 role because he was the chair of the State Affairs</p> <p>2 Committee, which had jurisdiction over election-related</p> <p>3 bills?</p> <p>4 A. I don't know the reason he was chosen. I think</p> <p>5 it was a good choice because in addition to his</p> <p>6 experience with the election procedure, he's a</p> <p>7 long-serving member of the Senate, familiar with Senate</p> <p>8 rules and procedure, and just frankly, an even-handed</p> <p>9 temperament and trusted by all members of the Senate.</p> <p>10 Q. Is there a reason why Senator Fraser was not</p> <p>11 selected for that role?</p> <p>12 A. Likely because he was the sponsor of the bill</p> <p>13 in question.</p> <p>14 Q. I see. So he would appear as sort of a witness</p> <p>15 or a resource?</p> <p>16 A. Correct. I think -- well, the way it would</p> <p>17 work is a senator would be appointed to preside, someone</p> <p>18 other than Lieutenant Governor. You would not have the</p> <p>19 sponsor of the bill presiding. Even in a regular</p> <p>20 committee process, the chair of the committee would hand</p> <p>21 the gavel off to the vice chair, someone else to preside</p> <p>22 if a bill of the chair came before the committee. So in</p> <p>23 this case, Senator Fraser was almost certainly not</p> <p>24 chosen because he was the sponsor of Senate Bill 14.</p> <p>25 MS. WESTFALL: Would you please mark this?</p>
<p style="text-align: right;">126</p> <p>1 A. It is a letter to Senator Birdwell, and my</p> <p>2 recollection is that every senator got a similar letter</p> <p>3 stating Lieutenant Governor Dewhurst's intent to</p> <p>4 recognize Senator Duncan, to resolve the Senate into</p> <p>5 Committee of the Whole to consider SB 14 relating to</p> <p>6 Voter ID, to appoint Senator Duncan as chair of that</p> <p>7 committee, and then some other time line procedural</p> <p>8 issues.</p> <p>9 Q. Did you draft this letter?</p> <p>10 A. No.</p> <p>11 Q. Who drafted this letter?</p> <p>12 A. I don't know.</p> <p>13 Q. What did the initials at the bottom mean?</p> <p>14 A. DD would likely be David Dewhurst, and EG would</p> <p>15 likely be Elaine Gonzalez, his assistant.</p> <p>16 Q. Why did Senator Duncan make a motion to resolve</p> <p>17 the Senate to the Committee of the Whole?</p> <p>18 A. I don't know why he did what he did.</p> <p>19 Procedurally, a senator has to make the motion to</p> <p>20 resolve it into a Committee of the Whole.</p> <p>21 Q. And Mr. Dewhurst himself was not able to do</p> <p>22 that; is that correct?</p> <p>23 A. Correct. I'm not aware of a procedure where</p> <p>24 the Lieutenant Governor can do so.</p> <p>25 Q. Was it -- was Senator Duncan selected for this</p>	<p style="text-align: right;">128</p> <p>1 (Exhibit 161 marked for identification.)</p> <p>2 MS. WESTFALL: Go off the record one</p> <p>3 second.</p> <p>4 (Brief discussion off the record.)</p> <p>5 MS. WESTFALL: Back on the record.</p> <p>6 Q. (By Ms. Westfall) You've been handed Exhibit</p> <p>7 161. Do you recognize this document?</p> <p>8 A. Appears to be copy of some version of SB 14.</p> <p>9 Q. Do you see the date at the bottom?</p> <p>10 A. Looks like the date January 12, 2011.</p> <p>11 Q. Can you refer yourself back to that other</p> <p>12 exhibit and of the chronology of Senate Bill 14?</p> <p>13 A. Actually I don't have that. I have the</p> <p>14 chronology of 362.</p> <p>15 Q. All right. Strike that. We'll go back to that</p> <p>16 a later time.</p> <p>17 So the bill gets filed in November 2010,</p> <p>18 correct? And then are there changes to the bill between</p> <p>19 its filing in November 2010 and January 2012 -- 2011?</p> <p>20 A. Well, we know there was at least -- again,</p> <p>21 without knowing which versions were officially filed,</p> <p>22 referring back to the earlier e-mail from Janice McCoy</p> <p>23 to Senate staffers, it looks like she made one change</p> <p>24 that she referenced there, deleted Section 18, and made</p> <p>25 some changes -- or didn't make changes to Section 14. I</p>

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<p style="text-align: right;">129</p> <p>1 don't know what changes may have been made between that 2 version and that attachment and this without looking 3 through it. And I don't know which was filed and which 4 was not filed. 5 Q. Is it possible that you could prefile a bill in 6 November of 2010 and then continue working on different 7 iterations and file another version in January 2011? 8 A. Yes. A bill can be changed by the author as 9 often as they like. 10 Q. Do you recall that -- without looking at the 11 documents, do you recall from your memory whether 12 changes were made to the bill during that period of 13 time? 14 A. I don't recall. 15 Q. And you were involved in developing Senate Bill 16 14; is that right? 17 A. I had conversations with Janice McCoy regarding 18 the bill, and I had been working on it previous 19 sessions. Yes, I think it's fair to say I was aware, 20 and I was certainly -- and for my office's purposes, in 21 charge of analyzing and tracking the bill. 22 Q. Was Ms. Jennifer Fagan also involved in the 23 drafting process or was it chiefly you and Ms. McCoy? 24 A. I can't remember the extent to Jennifer Fagan 25 was involved. And I should say the development. The</p>	<p style="text-align: right;">131</p> <p>1 states where Voter ID was implemented, Indiana and 2 Georgia and Louisiana. I would have looked through 3 testimony provided during the course over the last 4 previous few sessions on this -- on this concept. I 5 don't know what else. I imagine I would have drawn from 6 a lot of sources. But most importantly, if I was asked 7 to draft something, I would have just done what I was 8 asked to draft as a sort of administrative matter. 9 Q. (By Ms. Westfall) Kind of a technical matter? 10 A. Correct. 11 Q. And this would have been at the instruction of 12 Mr. Dewhurst? 13 A. Unlikely. 14 Q. At whose instruction? 15 A. More likely at the instruction of Janice, whose 16 boss was the sponsor. And as far as I know, Janice does 17 not have experience drafting bills herself, so she may 18 have asked me to help make sure the formatting was 19 correct and so forth. 20 Q. I see. Did you, besides the sources that you 21 just testified to, did you look at any model Voter ID 22 legislation from interest groups? 23 A. No. I don't recall looking at it. 24 Q. Did you or the Lieutenant Governor exchange 25 drafts of Senate Bill 14 with anybody during this</p>
<p style="text-align: right;">130</p> <p>1 drafting, I mean, for example, on this Exhibit 161, 2 there's a number at the bottom which I think indicates 3 it came from Senate Engrossing and Enrolling, which is 4 an agency within the Senate to draft bills. So I don't 5 know how much input Jennifer Fagan or myself had on this 6 particular draft or the bill as a whole. 7 Q. Were there other staff involved besides you, 8 Ms. McCoy and Ms. Fagan in drafting Senate Bill -- 9 developing Senate Bill 14? 10 A. I don't recall. Again, I think given 11 Ms. McCoy's earlier e-mail, there's a list of Senate 12 staff. I don't know to the extent to which any of those 13 people were or were not involved or whether people not 14 on that list were involved. 15 Q. Were you involved in drafting Senate Bill 14? 16 A. I don't recall. I may have. I have a 17 background of drafting bills. It's possible that I may 18 have helped with the language, sure. 19 Q. Do you recall what sources you consulted, if 20 any, to draft Senate Bill 14? 21 MS. HALPERN: Objection, assumes facts not 22 in evidence. 23 A. To the extent I did draft or help with drafting 24 language, I assume I would have looked at previous 25 versions of this bill. I would have looked to other</p>	<p style="text-align: right;">132</p> <p>1 period? 2 A. I don't know what he did. To the extent I 3 exchanged drafts or -- does that include reviewing 4 drafts? It likely would have only have been with Janice 5 McCoy and possibly with Jennifer Fagan. I don't recall 6 forwarding drafts to other people. I may have, but I 7 don't recall. 8 Q. Did you review any studies about the impact of 9 Voter ID in other states or any implications of Voter ID 10 in other states in drafting Senate Bill 14? 11 A. To the extent I drafted portions of this bill 12 or didn't draft portions of the bill, I'm not sure. I 13 know, generally, I was aware of studies related to voter 14 turnout and so forth in Voter ID states. 15 Q. And by Voter ID states, you're referring to 16 Georgia and Indiana? 17 A. Indiana and Georgia, and there seems like there 18 may have been some others in 2011, Louisiana or -- and 19 maybe some other jurisdictions. 20 Q. Do you recall the particular studies you looked 21 at? 22 A. I don't remember the names of the studies. I 23 remember the gist being that turnout had not been 24 adversely impacted in the wake of Voter ID legislation. 25 Q. How did you come upon learning about those</p>

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<p style="text-align: right;">133</p> <p>1 studies?</p> <p>2 A. Probably an Internet search. Possibly from</p> <p>3 testimony in prior sessions. I think in one of our -- I</p> <p>4 think in the 2009 session, one of the witnesses was an</p> <p>5 Indiana elections official who would have probably</p> <p>6 suggested or shown the impact in that state.</p> <p>7 Q. Did you chiefly learn about the studies of the</p> <p>8 impact in Indiana and Georgia through those states'</p> <p>9 election officials?</p> <p>10 A. I can't say chiefly. I'm sure to some extent</p> <p>11 it was directly from them. To some extent it was</p> <p>12 indirectly by reading reports from those agencies</p> <p>13 online. But I'm sure there were lots of other</p> <p>14 independent sources I looked at.</p> <p>15 Q. When you were involved in drafting and</p> <p>16 developing Senate Bill 14, did you consider other forms</p> <p>17 of ID to include that were not ultimately in the bill</p> <p>18 that became law?</p> <p>19 A. Did I consider them?</p> <p>20 Q. Yes.</p> <p>21 A. I think, sure. I mean, lots of forms of ID</p> <p>22 exist. I think there was a process. Again, I don't</p> <p>23 remember making any sort of formal decisions about what</p> <p>24 was and was not going to be included. But yeah, there</p> <p>25 were -- if only from other drafts of the bill in</p>	<p style="text-align: right;">135</p> <p>1 back on the record now, to the extent that the</p> <p>2 defendants did not object to those portions of the</p> <p>3 testimony that were designated as highly confidential or</p> <p>4 exhibits introduced as part of that testimony, we're</p> <p>5 going to assert a standing objection to those documents</p> <p>6 that were produced from Texas v. Holder pursuant to</p> <p>7 Judge Ramos's order that they were only legislatively</p> <p>8 privileged. So that's the same objection that we've</p> <p>9 asserted previously in this deposition, and it will be</p> <p>10 our standing objection to those documents that are</p> <p>11 introduced as highly confidential.</p> <p>12 MS. WESTFALL: Very well.</p> <p>13 Q. (By Ms. Westfall) Turning back to Exhibit 161,</p> <p>14 Senate Bill 14, dated 1-12-2011. We were just talking</p> <p>15 about forms of ID that you considered and did not</p> <p>16 include in the bill. Do you recall any particular forms</p> <p>17 of ID that you considered, you, collectively, you,</p> <p>18 Ms. McCoy, Ms. Fagan, you, yourself, within your office,</p> <p>19 that were not included in Senate Bill 14 ultimately?</p> <p>20 A. I'm not aware of what forms of ID Ms. McCoy or</p> <p>21 others considered. In terms of what I considered,</p> <p>22 frankly, I don't recall. But again, I'm sure I would</p> <p>23 have considered, you know, forms of ID that had been</p> <p>24 used in other states, that existed in the previous</p> <p>25 versions of this legislation.</p>
<p style="text-align: right;">134</p> <p>1 previous -- similar bills in previous sessions, you</p> <p>2 know, and opponents of the bill would certainly have</p> <p>3 suggested alternative or additional methods of ID.</p> <p>4 Q. Could you --</p> <p>5 MS. HALPERN: Counsel, I'd like to confer</p> <p>6 with the witness. We're treading into deliberative</p> <p>7 process privilege territory now, and I want to just</p> <p>8 confer with him and see if he wants to waive it. Can we</p> <p>9 go off?</p> <p>10 MS. WESTFALL: Certainly.</p> <p>11 (Recess taken from 12:20 to 12:24 p.m.)</p> <p>12 MS. HALPERN: I'm hoping that the both of</p> <p>13 you counsel will confer, because the rule is seven</p> <p>14 hours. It's not seven hours for one and seven hours for</p> <p>15 somebody else. So if she uses up all your time, that's</p> <p>16 a dispute you have to have with Elizabeth and not -- not</p> <p>17 with this witness and not with his lawyer.</p> <p>18 MS. WESTFALL: We'll confer.</p> <p>19 MS. HALPERN: Okay.</p> <p>20 MS. WESTFALL: We're not saying we agree</p> <p>21 with you. We'll confer.</p> <p>22 MS. HALPERN: All right.</p> <p>23 MS. WESTFALL: In the interest of</p> <p>24 cooperation.</p> <p>25 MR. WHITLEY: And to be clear, since we're</p>	<p style="text-align: right;">136</p> <p>1 Q. Did you consider allowing the use of expired</p> <p>2 IDs in Senate Bill 14?</p> <p>3 A. I don't recall a specific consideration of</p> <p>4 that.</p> <p>5 Q. Did you conduct during this period kind of in</p> <p>6 the beginning of January or prior to that time, any</p> <p>7 analyses about how many registered voters possessed the</p> <p>8 required forms of ID under Senate Bill 14?</p> <p>9 A. I remember meeting with the Secretary of</p> <p>10 State's office, but I can't recall -- about available</p> <p>11 identification, but I cannot remember the details of</p> <p>12 that meeting.</p> <p>13 Q. Was that meeting around February or late</p> <p>14 January 2011?</p> <p>15 A. I don't know.</p> <p>16 Q. Was that with Ms. McGeehan?</p> <p>17 A. Yes.</p> <p>18 Q. Was Coby Shorter at that meeting?</p> <p>19 A. I cannot recall, but I don't believe so.</p> <p>20 Q. Was John Sepheri at that meeting?</p> <p>21 A. I don't recall.</p> <p>22 Q. Was Senator Williams' staff person at that</p> <p>23 meeting?</p> <p>24 A. I can't recall.</p> <p>25 Q. What was the meeting about?</p>

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<p style="text-align: right;">137</p> <p>1 A. My memory is that Janice and myself, possibly 2 Jennifer Fagan and possibly others, met I believe in 3 Senator Fraser's offices to discuss generally the 4 availability of IDs. I don't recall specifics of the 5 meeting. I know it was generally about the election 6 process. There may have been some discussion of how 7 different steps in the legislative -- electoral process 8 work, but I can't remember specifics. 9 Q. Was this meeting before the Senate, the 10 Committee of the Whole or the full Senate considered 11 SB 14? 12 A. Probably, but I can't be sure. 13 Q. And was part of that discussion about which 14 registered voters have forms of state issued ID? 15 MS. HALPERN: I'm going to object as 16 vague. 17 A. Yeah, I think -- go ahead, I'm sorry. 18 MS. HALPERN: I don't understand your 19 question. 20 Q. (By Ms. Westfall) You may answer. 21 A. I think in speaking to Ms. McGeehan from the 22 Secretary of State's office, I would have been 23 interested in knowing how many voters used ID when they 24 vote as opposed to using just a registration card or 25 some other ID.</p>	<p style="text-align: right;">139</p> <p>1 Q. -- handguns? 2 A. Yes, it would, CHL license, CHL, yeah. 3 Q. Was there discussion in this meeting about -- 4 with Ms. McGeehan, as to which voters possessed those 5 state-issued forms of ID? 6 A. I don't think so. I think it was strictly at 7 that time how many voters present a driver's license or 8 some other identification. It wasn't meant to be the 9 types of voters or how many types of ID. I think it was 10 just who does more than present their registration card. 11 That's my memory. 12 Q. Is it your understanding from that meeting that 13 the Secretary of State's office collects that 14 information? 15 A. I think they might. They are the counties know 16 who presents just a card versus presents an ID. I think 17 that might be right. 18 Q. Is that your understanding that that was part 19 of the statewide voter registration database? 20 A. I don't know what database it might exist in. 21 Q. At this time in early January-February 2011, 22 was there any analysis to determine whether minority 23 voters would be disproportionately less likely to 24 possess the state-issued forms of ID that you just 25 mentioned?</p>
<p style="text-align: right;">138</p> <p>1 Q. Interesting. So what did you learn from that 2 question? 3 A. I can't remember. 4 Q. Did you -- 5 A. I think I remember, frankly, that she would 6 look into it to be sure, and I can't remember the 7 outcome of that. 8 Q. What other forms of acceptable state-issued ID 9 under Senate Bill 14? 10 A. Under Senate Bill 14, if I can look to make 11 sure I'm correct. It's photo IDs including -- 12 Q. And I'm just turning your attention to the 13 state IDs only. 14 A. The state IDs under Senate Bill 14, and again, 15 all I have is this copy of Senate Bill 14. I don't know 16 what version this is. But my memory is it would be a 17 driver's license, a personal identification card or 18 election identification card issued by DPS. 19 MS. HALPERN: And I'd like the record to 20 reflect that the witness is testifying from Exhibit 151, 21 which is dated January 12, 2011. 22 MS. WESTFALL: Thank you, Counsel. 23 Q. (By Ms. Westfall) Would it also include 24 license to carry -- 25 A. Right.</p>	<p style="text-align: right;">140</p> <p>1 A. I -- I did not conduct such research, but I 2 don't know if it existed. 3 Q. Are you aware of any analysis that you didn't 4 conduct along those lines? 5 A. I have to say I don't recall. I know there was 6 testimony in the committee process about the impact on 7 various populations, and I can't remember how much of 8 that was hypothesis and how much was based on other 9 states and how much was based on formal studies. 10 Q. What was the purpose of not allowing voters to 11 use nonphoto ID in Senate Bill 14? 12 A. I don't know the purpose, because it's not my 13 bill. I think there was public discussion about the 14 need to have a secure process, and nonphoto ID is less 15 secure than photo ID. 16 Q. What is the basis for that statement? 17 A. There -- if a document has a photo with a 18 person's face on it, especially the type of document 19 listed in Senate Bill 14, that's generally a much more 20 secure document with various seals and holograms and 21 codes on it that make it more difficult to forge, as 22 opposed to some of the older law-permissible IDs such as 23 utility bills or government checks or so forth. 24 Q. And is it -- was it your view that those bills, 25 those forms of ID and the nonphoto ID would not</p>

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<p style="text-align: right;">141</p> <p>1 sufficiently prove that the voter was who she said she</p> <p>2 was at the polls?</p> <p>3 A. I think my opinion is that voters who appear</p> <p>4 without photo ID, there's a greater chance that that is</p> <p>5 not the voter they claim to be --</p> <p>6 Q. Was there any --</p> <p>7 A. -- because it's a less secure form of</p> <p>8 identification.</p> <p>9 Q. Was there any factual basis for drawing the</p> <p>10 conclusion that nonphoto ID was not effective?</p> <p>11 A. Sure. I think, for one, practice of the</p> <p>12 federal government for many benefits and access at the</p> <p>13 federal level, but also in Texas, you have to have a</p> <p>14 photo ID. So I guess a lot of us thought if it was good</p> <p>15 enough for the feds, then it was good enough for Texas.</p> <p>16 Q. Under -- again, going back to the Help America</p> <p>17 Vote Act, is it your understanding under that federal</p> <p>18 law that if a voter registers and their information</p> <p>19 cannot be matched against the driver license database or</p> <p>20 Social Security, that they must show a form of ID when</p> <p>21 they appear in person to vote; is that right?</p> <p>22 A. I'm not -- I'm not sure.</p> <p>23 Q. Okay. Are you aware of any facts indicating</p> <p>24 that a voter under Texas previous law came into the</p> <p>25 polling place with a nonphoto ID and tried to him</p>	<p style="text-align: right;">143</p> <p>1 Q. Eight and nine. Just take a look. You don't</p> <p>2 need to read them aloud, but if you could just take a</p> <p>3 look and let me know when you've had a chance.</p> <p>4 A. Okay.</p> <p>5 Q. Do you see that this only includes photo ID?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why non-photo ID was not included?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know who made the decision not to</p> <p>10 include non-photo ID in Senate Bill 14?</p> <p>11 A. I don't, but I can presume it's Senator</p> <p>12 Fraser's bill. And he decided, but I don't know that.</p> <p>13 MS. HALPERN: I ask the witness not to</p> <p>14 speculate.</p> <p>15 Q. (By Ms. Westfall) Did anything occur between</p> <p>16 2009 and 2011 that made two forms of non-photo ID an</p> <p>17 acceptable option in 2009, but not in 2011?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. Would allowing the use of non-photo ID</p> <p>20 interfere with the purposes of Senate Bill 14?</p> <p>21 A. Would allowing non-photo ID interfere with the</p> <p>22 purposes? The purposes, as I understand them, are to</p> <p>23 increase the security of the elections, and so I</p> <p>24 would -- in my opinion, I would say yes, non-photo is</p> <p>25 less secure. To the extent that's a purpose of the</p>
<p style="text-align: right;">142</p> <p>1 impersonate another voter?</p> <p>2 A. I believe there was testimony during some of</p> <p>3 the committee processes. In fact, I think Senator</p> <p>4 Williams' own brother was a victim of in-person voter</p> <p>5 fraud. He had been shown casting a vote but had, in</p> <p>6 fact, not yet voted in that election. There may have</p> <p>7 been other examples that I can't specifically remember.</p> <p>8 Q. Other than the public record surrounding SB 14</p> <p>9 and SB 362, are you aware of any other instances of the</p> <p>10 use of nonphoto ID leading to that consequence that you</p> <p>11 just described?</p> <p>12 A. Not -- no.</p> <p>13 MS. HALPERN: Counsel, lunch.</p> <p>14 MS. WESTFALL: Let's do lunch. Let's go</p> <p>15 off the record, because it will take a little while to</p> <p>16 finish talking about this preliminary stuff.</p> <p>17 (Lunch recess from 12:35 to 1:39 p.m.)</p> <p>18 Q. (By Ms. Westfall) So we were discussing before</p> <p>19 lunch the Exhibit 161, the version of Senate Bill 14</p> <p>20 dated January 12, 2011.</p> <p>21 A. Yes.</p> <p>22 Q. What was -- can you review the forms of ID</p> <p>23 under this version of the bill, which are at pages,</p> <p>24 gosh --</p> <p>25 A. Eight and nine.</p>	<p style="text-align: right;">144</p> <p>1 bill, then it interferes with that purpose.</p> <p>2 Q. In 2009, with regard to Senate Bill 362, at</p> <p>3 that time you argued in a previous exhibit we discussed</p> <p>4 that non-photo ID did further the purpose of preventing</p> <p>5 voter fraud, increasing voter confidence, et cetera; is</p> <p>6 that correct?</p> <p>7 MS. HALPERN: Objection, misstates facts</p> <p>8 not in evidence.</p> <p>9 A. I'd have to double-check and see. I don't</p> <p>10 think first that it was the purpose, and I'm not sure</p> <p>11 that I argued that as you suggested. To the extent that</p> <p>12 you're referring to Exhibit 155, Reasons to Support 362</p> <p>13 As Filed, I don't think it mentions -- on Number 5 on</p> <p>14 00087008, one reason to support the bill is that it</p> <p>15 increases the chance of the federal preclearance because</p> <p>16 many forms of ID are acceptable, is that --</p> <p>17 MS. WESTFALL: Can I break in right now?</p> <p>18 This needs to be designated as highly confidential, his</p> <p>19 response.</p> <p>20 Q. (By Ms. Westfall) Turning your attention back</p> <p>21 to Exhibit 155, did you not, with regard to the talking</p> <p>22 points at Texas TX00087009, argue and present talking</p> <p>23 points that at Roman II that the bill protects Texas</p> <p>24 voters in five different regards?</p> <p>25 A. Yes, I did.</p>

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<p style="text-align: right;">145</p> <p>1 Q. And that was -- you were arguing that the bill, 2 Senate Bill 362, protects Texas voters, were you not? 3 A. Yes. But I was not arguing it was the only way 4 to protect Texas voters. That's what your earlier 5 question was asking. 6 Q. Are you aware of any facts at all that support 7 the decision not to include non-photo ID in Senate Bill 8 14? 9 A. I -- again, I'm not sure why Senator Fraser 10 crafted this bill the way he did. 11 Q. Are you aware that Senate Bill 362 permitted 12 the use of state and federal issued photo ID? 13 A. Yes. 14 Q. Do you know why Senate Bill 14 did not include 15 these forms of ID? 16 A. I don't. Except to say it's a different bill 17 and a different session, but I don't know why. 18 Q. Were you involved in any discussions about the 19 use of non-photo ID in -- about including that in Senate 20 Bill 14? 21 MS. HALPERN: Objection, asked and 22 answered. I think we covered this before lunch. 23 Q. (By Ms. Westfall) You may answer. 24 A. I don't recall specific discussions about what 25 -- whether those provisions should be in the bill or</p>	<p style="text-align: right;">147</p> <p>1 use employee IDs? 2 A. I don't see employer IDs listed in this copy of 3 362 that I have, except to the extent they would be an 4 ID card issued by the federal or state government or 5 local government. 6 Q. Thank you. 7 Did Senate Bill 362 allow for the use of 8 student IDs? 9 A. Not specifically. Again, to the extent that a 10 student ID card was considered an ID card issued by 11 federal or state government, it would be covered by 362. 12 So I suppose some ID cards from the universities. 13 Q. So were student IDs included under agencies or 14 institutions of the state to the extent they were state 15 universities? 16 A. I think the argument could be made that 17 institution of this state includes a state university. 18 Q. Do you know why Senate Bill 14 did not include 19 the use of student IDs? 20 A. I don't know. I do know during the open -- the 21 floor debate on this bill, there were some concern that 22 universities might be treated differently and that it 23 would be confusing to allow some university IDs but not 24 others. And the concern was that if it was not a state 25 university, there would be no way of controlling the</p>
<p style="text-align: right;">146</p> <p>1 not. 2 Q. Do you recall any discussions about whether to 3 include state and federal issued photo ID in Senate Bill 4 14? 5 A. I don't recall. 6 Q. Are you aware of any facts that would support 7 any decision not to include those as acceptable forms of 8 ID in Senate Bill 14? 9 A. No. I mean, again, except to say that SB 14, I 10 think, provides a more secure electoral system than 362. 11 I don't know that that was the reason. 12 Q. Other than what you testified to earlier today, 13 you're not aware of any other facts or rationales for 14 why those forms of ID were not included in Senate Bill 15 14? 16 A. I don't think so. 17 Q. Did Senate Bill 14 permit the use of employee 18 IDs? 19 A. Senate Bill 14? 20 Q. Yes. 21 A. I don't believe it did. 22 Q. Do you know why it did not allow the use of 23 employee IDs? 24 A. I do not know. 25 Q. Did Senate Bill 362 allow the use -- voters to</p>	<p style="text-align: right;">148</p> <p>1 form of those IDs, and that might be less secure. 2 Q. Do you know how the exception for individuals 3 with disabilities came to be included in Senate Bill 14? 4 A. My memory is that it was suggested on the floor 5 by Senator -- and I can't recall for sure, if that is 6 correct, and if so, which Senator suggested it. 7 Q. Was it Senator Patrick? 8 A. It may have been. 9 Q. Do you know why that was included as an 10 exception to the bill? 11 A. My memory is that he, on the floor at least, 12 said -- and I don't know personally, but my memory from 13 the floor debate is that he had done lots of work with 14 disabled populations and wanted that exception in there. 15 Q. Do you have any other information that was not 16 in public record as to why the disability exemption was 17 included in Senate Bill 14? 18 A. No. 19 Q. How did the exception for first -- strike that. 20 In one or more iterations of Senate Bill 21 14, was there an exemption for voters over the age of 22 70? 23 A. I don't remember if Senate Bill 14 had such an 24 exemption or not. Yet, other versions of the bill -- 25 oh, wait, never mind. On Exhibit 161 on Page 5, yes, I</p>

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<p style="text-align: right;">149</p> <p>1 see that there is an exception for people 70 years of 2 age or older as of January 1, 2012. 3 Q. Do you know how this provision became included 4 in this version of Senate Bill 14? 5 A. I don't know. 6 Q. What is the purpose of that provision? 7 A. I don't know the intended purpose, but my guess 8 is -- 9 MS. HALPERN: Let me stop you right there. 10 A. I don't know the purpose. 11 MS. WESTFALL: And for the record, I would 12 like to note that you can make an objection based on 13 speculation, but of course, the witness can answer it. 14 It's not a proper basis under the federal rules for 15 instructing the witness not to answer. 16 Q. (By Ms. Westfall) Are you aware of any facts 17 that supported the need for this exemption for voters 18 over the age of 70? 19 A. No. 20 Q. How did the exception for individuals with 21 religious objections to being photographed arise? 22 A. I can't recall. 23 Q. What is the purpose of that provision? 24 A. As I understand it, and again, I can't remember 25 who raised the issue, but there is apparently -- and I</p>	<p style="text-align: right;">151</p> <p>1 signed into law that were made in responses to some of 2 those concerns? 3 A. Again, without -- because I'm not the sponsor 4 of the bill, I don't know why each decision was made to 5 change the bill. And alternatively, some of the bill 6 was changed by amendments on the floor, and it's hard to 7 say what the specific -- there's no one purpose for 8 every member's vote. So I can say the bill did change, 9 I'm sure parts of the -- some of those changes were a 10 reaction to opponents who raised the issues you cited, 11 but I'm not sure I can name them off the top of my head. 12 Q. Did the Lieutenant Governor play a role in 13 developing strategy to ensure that SB 14 would be 14 enacted? 15 A. Strategy for it to be enacted? Does that 16 mean -- 17 MS. HALPERN: I'm going to direct the 18 witness this sounds predecisional to me, and I think 19 we're starting to encroach on the Lieutenant Governor's 20 privilege. So I'm going to direct you not to answer 21 that one. 22 MS. WESTFALL: What is the privilege that 23 you're asserting here? 24 MS. HALPERN: Predecisional. 25 MS. WESTFALL: Deliberative process or</p>
<p style="text-align: right;">150</p> <p>1 don't know if it's from another case or another state, 2 but there's some religious sect or group that does not 3 believe in being photographed or believe that being 4 photographed somehow steals their soul or does something 5 that crosses the tenets of their religion, and 6 therefore, to be safe, that exception should be put in 7 the bill. 8 Q. Can you think of any other purposes for that 9 exemption? 10 A. No. 11 Q. Did you believe that that exemption was legally 12 required as a first amendment issue? 13 A. I don't know that I thought it was legally 14 required. 15 Q. Did the Legislature in the course of debating, 16 amending, considering SB 14, make any changes to the 17 bills based on the concerns of the impact on racial and 18 ethnic minority voters? 19 A. I'm not sure I can recall specific parts of the 20 bill. I know specific amendments were suggested by 21 minority members of the Senate, but I'm not sure, 22 without walking through the bill line by line, what 23 might be characterized as you did. 24 Q. Sitting here today, can you recall any of the 25 changes that were in the final version of the bill</p>	<p style="text-align: right;">152</p> <p>1 legislative -- 2 MS. HALPERN: Yes, deliberative process. 3 MS. WESTFALL: Okay. And we have a 4 standing disagreement on whether that is an appropriate 5 privilege to assert with regard to that question. 6 Q. (By Ms. Westfall) Are you aware of any strategy 7 by the Legislature as a whole or individual legislators 8 to ensure that Senate Bill 14 would not have the same 9 fate that SB 362 did in the house? 10 A. I'm not aware of specific discussions designed 11 to ensure passage, except to say that every decision in 12 the Legislature is designed to ensure passage. By the 13 supporters, I should say. 14 Q. Are you aware of any particular steps that were 15 taken by supporters of SB 14 to ensure the bill would be 16 enacted? 17 A. By enacted, do you mean adopted by the 18 Legislature or implemented by Secretary of State? 19 Q. Adopted by the Legislature. 20 A. I don't -- I can't point to a specific step 21 within the legislative process, other than the ones 22 required by the constitution and the rules before a bill 23 can become law. 24 (Exhibit 162 marked for identification.) 25 Q. (By Ms. Westfall) You've been handed what's</p>

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<p style="text-align: right;">153</p> <p>1 been marked as 162. Do you recognize this document?</p> <p>2 A. It looks to be a copy -- the first page is a</p> <p>3 copy of the cover of the Senate rule book, and the</p> <p>4 second page is a copy of Rule 5.11 regarding special</p> <p>5 orders.</p> <p>6 Q. Is 5.11D the same provision that was put into</p> <p>7 place in the rules in 2009?</p> <p>8 A. Let me double-check. Yes. Appears so.</p> <p>9 Q. Was it adopted for the same reasons that the</p> <p>10 rule was adopted in 2009?</p> <p>11 A. I don't know.</p> <p>12 Q. Under 5.11D from the 2011 session, it would</p> <p>13 only require the support of a majority to ensure that</p> <p>14 voter ID legislation was set as a special order; isn't</p> <p>15 that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And the rule itself in 2011, 5.11D was adopted</p> <p>18 as part of all the rules that were adopted by a simple</p> <p>19 majority of the Senate; is that right?</p> <p>20 A. Correct.</p> <p>21 MS. WESTFALL: Would you mark this?</p> <p>22 (Exhibit 163 marked for identification.)</p> <p>23 MS. WESTFALL: And we're going to</p> <p>24 designate this as highly confidential.</p> <p>25 Q. (By Ms. Westfall) You've been handed what's</p>	<p style="text-align: right;">155</p> <p>1 Huffman.</p> <p>2 Q. Who did Wroe Jackson work for at this time?</p> <p>3 A. I believe Wroe worked for Senator Huffman, but</p> <p>4 he's now with the Secretary of State's Office. And I</p> <p>5 forget at what point he went from one office to the</p> <p>6 other.</p> <p>7 Q. Why did you circulate this e-mail?</p> <p>8 A. I think in the e-mail itself it says there's</p> <p>9 several documents that may prove useful in preparing for</p> <p>10 next week's voter ID debate.</p> <p>11 Q. And that's the reason why you sent it --</p> <p>12 A. I think so.</p> <p>13 Q. -- is to prepare --</p> <p>14 A. I can't recall sending the e-mail, but if</p> <p>15 that's what I wrote at the time, I'm sure that's the</p> <p>16 better indication.</p> <p>17 Q. Did you send these talking points, the summary</p> <p>18 of the standard, and chart of the differences to any</p> <p>19 other staff people for any other Senators?</p> <p>20 A. I don't recall. If none turned up in the</p> <p>21 discovery phase, then I don't think I did, or I don't</p> <p>22 have those copies. As far as I know, these are the only</p> <p>23 people.</p> <p>24 Q. Did Mr. Brunson or Ms. Rathgeber view these</p> <p>25 attachments before you sent this e-mail?</p>
<p style="text-align: right;">154</p> <p>1 been marked as Exhibit 163. Do you recognize this</p> <p>2 document?</p> <p>3 A. It looks like an e-mail from myself to some</p> <p>4 Senate staff and some people in my office with attached</p> <p>5 documents related to compliance with the Supreme Court,</p> <p>6 talking points on the bill, and comparisons of various</p> <p>7 state election laws.</p> <p>8 Q. Did you draft the cover? And it's TX00262645</p> <p>9 through TX00262649. Did you draft all these documents,</p> <p>10 including the cover e-mail?</p> <p>11 A. I think so.</p> <p>12 Q. Did you send this e-mail on Friday, January</p> <p>13 21st, to Jason Baxter, Janice McCoy and Jonathan</p> <p>14 Stinson?</p> <p>15 A. It looks that way.</p> <p>16 Q. And you copied your chief of staff and</p> <p>17 Lieutenant Governor Blaine Brunson and Julia Rathgeber</p> <p>18 as the policy director?</p> <p>19 A. Correct.</p> <p>20 Q. Is Jason Baxter a staff person, or was he at</p> <p>21 the time, a staff person for Senator Williams?</p> <p>22 A. Yes.</p> <p>23 Q. And is Jonathan Stinson was Senator Huffman's</p> <p>24 legislative director at the time?</p> <p>25 A. I don't know his title, but he was with Senator</p>	<p style="text-align: right;">156</p> <p>1 A. I can't recall.</p> <p>2 Q. Did Mr. Dewhurst?</p> <p>3 A. I can't recall.</p> <p>4 Q. Do you see that in your e-mail you allude to</p> <p>5 information discussed Sunday night?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall that discussion that you had</p> <p>8 Sunday night?</p> <p>9 A. My memory is it was -- it may have been a</p> <p>10 briefing, but I can't remember who it was for. These</p> <p>11 staffers presumably, but I can't remember if it was a</p> <p>12 staff brief or Senators or who else might have been</p> <p>13 there.</p> <p>14 Q. Were you doing a briefing prior to Senate</p> <p>15 consideration of SB 14?</p> <p>16 A. Probably. Without knowing the timing, I'm not</p> <p>17 sure if it was designed to be directly ahead of floor</p> <p>18 debate, or if it was just a general briefing and this</p> <p>19 was the only time people could be available.</p> <p>20 Q. Do you know what information was discussed on</p> <p>21 Sunday night that you allude to in this e-mail?</p> <p>22 A. My memory is it was just a general overview</p> <p>23 similar to these documents, you know, big picture stuff,</p> <p>24 on the legality of voter ID and what other states were</p> <p>25 doing.</p>

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<p style="text-align: right;">157</p> <p>1 Q. Turning your attention to the second page, 2 TX00262646, do you see it's called Ensuring Compliance 3 With the Supreme Court? 4 A. Yes. 5 Q. And you list five legitimate state interests 6 under column -- under Roman I? 7 A. Yes. 8 Q. How did you know that Senate Bill -- strike 9 that. 10 What was the basis for your argument that 11 Senate Bill 14 would deter and detect fraud? 12 A. As I've said before, I think state efforts to 13 stop criminal acts from occurring deter those acts from 14 occurring. So in this case, if we know election fraud 15 exists and we take steps to stop it, that would deter. 16 Q. Okay. Other than that sort of logic that you 17 just set forth in this deposition, were there any facts 18 that would cause you to concluded that SB 14 would deter 19 and detect fraud? 20 MS. HALPERN: Objection, mischaracterizes 21 his answer. Objection, compound. Objection, 22 misleading. 23 Q. (By Ms. Westfall) You may answer. 24 A. Again, I think taking the whole of testimony 25 over the preceding sessions, there have been testimony</p>	<p style="text-align: right;">159</p> <p>1 ballot. There are various notice requirements, and the 2 forms of ID listed here tend to be more secure. To the 3 extent we're talking about modernization, I think most 4 of these have various seals and bar codes and things 5 that make them more secure and more useful as 6 identification documents than some of the items 7 previously admissible under law. 8 Q. And because of the security of those particular 9 forms of ID, it modernizes election procedures in your 10 view? 11 A. Sure. I think a recently issued state ID is a 12 more modern form of identification than a utility bill. 13 Q. How does that modernize election procedures? 14 A. They're more technological, you know, features 15 of those forms of ID. They're more secure. In some 16 cases, they may be more recently issued. If they can't 17 be expired or can only be recently expired, that's 18 different than -- as far as I know, the utility bill, 19 for example, requirement didn't have an expiration 20 component to it. 21 Q. So the next two bullets are kind of similar; 22 protecting against voter fraud enabled by inaccurate 23 voter registration rolls, and counting only the eligible 24 voters to vote, right? 25 A. Right.</p>
<p style="text-align: right;">158</p> <p>1 and research done by myself and others showing that 2 fraud exists in Texas. And this had been implemented in 3 other states and as far as we knew was successful, and 4 therefore, it seemed reasonable to implement in Texas. 5 Q. How did you know that voter ID was successful 6 in other states? 7 A. When I say successful, I mean it had been 8 upheld by the courts and had not resulted in decreased 9 turnout. As it relates to fraud, I probably should have 10 used a different word, because I'm not sure sitting here 11 that I can say successful, but... 12 Q. It was not -- those bills -- in other words, 13 those bills were not found to be unlawful, and according 14 to studies that you saw, it did not reduce turnout in 15 those states; is that correct? 16 A. That is correct. 17 Q. What facts are you aware of that SB 14 would 18 improve and modernize election procedures? 19 A. Let me look at the bill real quick. 20 Q. Take your time. 21 A. First, I would say improve would include make 22 more secure, so by making the elections more secure, 23 you're improving them. Further, it provides more detail 24 for voters to -- regarding how to make sure that their 25 vote counts should they be asked to cast a provisional</p>	<p style="text-align: right;">160</p> <p>1 Q. Kind of similar? 2 What facts do you know or did you know at 3 the time when you wrote this set of -- set of talking 4 points, that would enable you to predict that SB 14 5 would have that effect? 6 A. Again, I think the whole intent of the bill is 7 to make sure eligible, properly identified voters are 8 casting votes. We had had testimony over the years 9 that, in fact, the registration rules were not a hundred 10 percent accurate and, in fact, there may be registration 11 cards sent to people who are dead or felons or otherwise 12 ineligible. 13 And so accurate, up-to-date identification 14 required at the polling place seems on its face to 15 protect against fraud and be designed to count only 16 eligible voters and votes. 17 Q. Isn't it true that some of the forms of ID 18 allowable under SB 14 could be obtained by persons who 19 are not U.S. citizens? 20 A. Sure. No system is perfect, but I think this 21 was a step in the right direction towards increasing the 22 security. It didn't say make a hundred percent secure, 23 because there's no such thing. But yes, any system 24 designed by humans can be abused by humans. 25 Q. So what types of ineligible voters would SB 14</p>

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<p style="text-align: right;">161</p> <p>1 prevent from voting?</p> <p>2 A. It's a broad category, I think. My</p> <p>3 understanding of ineligible voters would be someone who</p> <p>4 doesn't live in the state, someone who is dead, someone</p> <p>5 who fraudulently obtains someone else's identifying</p> <p>6 registration card, someone who produces false</p> <p>7 documentation. I could go on, I guess, but it's a broad</p> <p>8 category.</p> <p>9 Q. Well, turning back to that first category,</p> <p>10 people that don't reside in the state, those people are</p> <p>11 clearly ineligible to vote in the State of Texas,</p> <p>12 correct?</p> <p>13 A. Right. Well, I should say if they're a</p> <p>14 resident, but currently out of the state, they may vote.</p> <p>15 But yes, generally, that's right.</p> <p>16 Q. Assuming someone moved to another state with</p> <p>17 intent to remain in that other state, and they were not</p> <p>18 a Texas resident, then suppose that individual came back</p> <p>19 into the state with a driver's license with their former</p> <p>20 Texas address and a picture, that would be a qualifying</p> <p>21 ID under SB 14, correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. So under that circumstance, it would not</p> <p>24 prevent an ineligible voter, who should not be on the</p> <p>25 voter rolls, from participating in an election; isn't</p>	<p style="text-align: right;">163</p> <p>1 cards, which are similar to driver's licenses, but for</p> <p>2 the purpose of having a photo ID for elections, and</p> <p>3 those were to be issued at no cost.</p> <p>4 Q. At the time that you wrote these bullet points,</p> <p>5 you knew, did you not, that it cost -- there was a cost</p> <p>6 associated with obtaining a birth certificate in the</p> <p>7 State of Texas, correct?</p> <p>8 A. At the time of this, yes.</p> <p>9 Q. And that cost was \$22 at a minimum. Correct?</p> <p>10 A. Yes. But it's not today, as I understand it.</p> <p>11 Q. But at the time the bill was being considered</p> <p>12 when you wrote these bullet points, the cost was \$22,</p> <p>13 right?</p> <p>14 A. Again, yes, and this bullet point says, access</p> <p>15 to free photo ID cards, the cards are free.</p> <p>16 Q. But the underlying documentation to get the</p> <p>17 free card is not free, correct?</p> <p>18 A. If you already have a birth certificate, it's</p> <p>19 free.</p> <p>20 Q. If you don't have a birth certificate, it's not</p> <p>21 free though, right?</p> <p>22 A. It would have been 22 dollars, and now I</p> <p>23 believe it's either zero, zero to 3 dollars.</p> <p>24 Q. That occurred -- the change in what it cost to</p> <p>25 get a birth certificate occurred after Senate Bill 14</p>
<p style="text-align: right;">162</p> <p>1 that right?</p> <p>2 A. Right. Like I said, there's no perfect system.</p> <p>3 The universe of potential crimes or ineligible votes</p> <p>4 that would be cast is larger without this bill, and it</p> <p>5 is smaller with this bill, but it's not a perfect</p> <p>6 system. Of course, fraud still exists, and that's why</p> <p>7 lots of other bills have been able to be introduced</p> <p>8 regarding voter fraud. There's lots of types of fraud</p> <p>9 and efforts to stop that.</p> <p>10 Q. And then finally, what facts were you aware of</p> <p>11 at the time that you wrote this, that SB 14 would</p> <p>12 protect public confidence in elections?</p> <p>13 A. As you asked a similar question about 362, I</p> <p>14 think the polling continued to show that the voters of</p> <p>15 Texas supported photo ID, and that includes minority</p> <p>16 voters, blacks and Hispanics, and then voters as a whole</p> <p>17 overwhelmingly. I think you could draw just from that,</p> <p>18 that public confidence would increase by adopting</p> <p>19 measures supported by the public.</p> <p>20 Q. Turning to measures required to offset burdens,</p> <p>21 how did SB 14 accomplish and fulfill these required</p> <p>22 measures? And we'll start off with the first one, how</p> <p>23 does SB 14 provide access to free photo ID cards?</p> <p>24 A. As I see it, the bill currently as implemented</p> <p>25 allows -- required DPS to create election identification</p>	<p style="text-align: right;">164</p> <p>1 was enacted, did it not?</p> <p>2 A. I think that's right.</p> <p>3 Q. As to the second bullet, availability of</p> <p>4 provisional ballots and absentee ballots, how did Senate</p> <p>5 Bill 14 make available provisional ballots beyond what</p> <p>6 was already required by the Help America Vote Act and</p> <p>7 existing Texas law?</p> <p>8 A. Well, I mean, the section of the bill, I can</p> <p>9 pull it out, as I said earlier, if a voter -- the intent</p> <p>10 was if a voter appears without the appropriate ID, they</p> <p>11 would not be turned away, they would be allowed to cast</p> <p>12 a provisional ballot. And then the bill sets out</p> <p>13 provisions for a voter to provide better identification</p> <p>14 to have the ballot counted. And whether that's an</p> <p>15 addition to provisions under HAVA or other statutes, I'm</p> <p>16 not sure. But it seems like this particular memo that</p> <p>17 you're pointing to, in the Supreme Court decision, they</p> <p>18 wanted to make sure provisional ballots were available.</p> <p>19 Whether that's available because of HAVA or because of</p> <p>20 state law, I don't think mattered to the court.</p> <p>21 Q. But provisional ballots aren't very meaningful</p> <p>22 if you cast them and then they're not counted, right?</p> <p>23 That's not really voting, right?</p> <p>24 A. It's voting, but I think again, the idea that a</p> <p>25 constituent can go back and confirm that their ballot is</p>

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<p style="text-align: right;">165</p> <p>1 being counted was the point. And then SB 14 voters are 2 allowed the opportunity to get the ID and make sure 3 their ballot is counted. 4 Q. Do you think that having to go back to an 5 election official a second time is more burdensome or 6 less burdensome than voting a provisional ballot once 7 and having election officials determine whether that's 8 valid from the standpoint of the voters? 9 A. It's all part of casting a vote. Two trips is 10 more than one trip. But again, in terms of the process 11 of voting, there's lots of steps. In Texas, for 12 example, in primaries and caucuses and things, there are 13 multiple meetings and steps you have to have your voice 14 counted. So yes, if you're asking me is two trips more 15 than one, yes, it is. Is it more burdensome? You know, 16 it's part of casting a vote, but I don't think it's too 17 burdensome. 18 Q. In terms of the inconvenience of voting, are 19 you aware that to obtain an EIC, you must present a 20 document that indicates your U.S. citizenship? 21 A. I'm not aware. I'm aware that -- my 22 understanding is that the EIC runs parallel to driver's 23 licenses. And obviously, the distinction being that one 24 is for voting only and one is for a broader set of 25 functions. So I can't say that I know that to be a</p>	<p style="text-align: right;">167</p> <p>1 proof of citizenship to obtain an EIC, that is not how 2 you prove citizenship when you register to vote; is that 3 right? 4 A. I think that as correct. 5 Q. Because when you register to vote, you sign an 6 application under penalty of perjury saying, I am a U.S. 7 citizen; is that correct? 8 A. Correct. 9 Q. And that's not the same as showing a 10 documentary proof of citizenship? 11 A. Correct. 12 Q. Is it true in the State of Texas that many 13 voters can walk to their precinct to vote? 14 A. That seems accurate to me. 15 Q. But it's not the case with regard to all driver 16 license offices, is that, that you can walk to your 17 driver license office? 18 A. I don't know that. 19 MS. HALPERN: Counsel, before you ask your 20 next question, I would like to confer with the witness. 21 MS. WESTFALL: Certainly. Do you want to 22 step out? 23 MS. HALPERN: Yeah. 24 (Brief recess from 2:19 to 2:22 p.m.) 25 MS. HALPERN: Back on the record. I need</p>
<p style="text-align: right;">166</p> <p>1 fact. 2 Q. Are you aware that Senate Bill 14 permitted DPS 3 in creating the EIC to require fingerprinting of 4 applicants? 5 A. I'm not aware of that. And I don't have the 6 EIC language in front of me, so I can't be a hundred 7 percent certain what the statute says. 8 Q. And voters in registering to vote need not 9 supply fingerprints; is that correct? 10 A. To register to vote, right, I don't think you 11 need to supply fingerprints. 12 Q. To register to vote, you need not, in the State 13 of Texas, provide proof that you're a U.S. citizen, 14 other than signing under penalty of perjury on your 15 voter registration application; is that correct? 16 A. Right. I think signing that -- effectively 17 signing an affidavit is a step of assurance for the 18 State of Texas. 19 Q. And that's a different way to prove citizenship 20 in the voter registration context than to obtain an EIC 21 assuming you have to show -- 22 A. Fingerprints and signatures are different, yes. 23 Q. Right. Now, strike that, because I think we 24 just got -- talked over each other. 25 Assuming that you must show documentary</p>	<p style="text-align: right;">168</p> <p>1 to make a late objection, Counsel, to your question 2 asking the witness if he was aware that SB 14 allowed 3 requiring fingerprints of a witness to get an EIC card. 4 I don't know if you meant to phrase it that way. 5 MS. WESTFALL: I know what I intended. 6 MS. HALPERN: All right. I'm objecting to 7 that assuming facts not in evidence. 8 MS. WESTFALL: Okay. I guess we're 9 back -- we're still back on, so. 10 And we are continuing our designation as 11 highly confidential. So I hope I did that for that 12 prior document, I believe I did. 13 Could you mark this? 14 (Exhibit 164 marked for identification). 15 Q. (By Ms. Westfall) You've been handed what's 16 been marked as Exhibit 164. Do you recognize this 17 document? 18 A. Yes. 19 Q. What is it? 20 A. It is an e-mail from myself to various Senate 21 staff, cc'ing my chief of staff and policy director, 22 expressing concerns about preclearance. And then 23 there's an attachment explaining generally the standard 24 of review by the Department of Justice. 25 Q. Do you see that at the top -- and this is --</p>

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<p style="text-align: right;">169</p> <p>1 for the record, this is TX00262650 through TX00262652.</p> <p>2 MS. HALPERN: Counsel, this is marked</p> <p>3 highly confidential.</p> <p>4 MS. WESTFALL: Yeah, we're still -- I</p> <p>5 believe we're still -- we should be still on the highly</p> <p>6 confidential designation. Thank you.</p> <p>7 Q. (By Ms. Westfall) Do you see at top of Page</p> <p>8 262650, that Mr. Stinson had forwarded this e-mail to</p> <p>9 Wroe Jackson and another recipient?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know who that recipient is,</p> <p>12 jlawyer119@aol.com?</p> <p>13 A. No. It's -- no.</p> <p>14 Q. Why did you believe that preclearance was</p> <p>15 doubtful, to use your words?</p> <p>16 A. I think my reasoning was that the Obama DOJ had</p> <p>17 been aggressively interpreting and enforcing the Voter</p> <p>18 Rights Act through preclearance and didn't seem to</p> <p>19 particularly like Texas, and so there were -- there was</p> <p>20 a risk that it would not be precleared.</p> <p>21 Q. And you sent this e-mail Saturday, January 22,</p> <p>22 2011; is that right?</p> <p>23 A. That's what it looks like.</p> <p>24 Q. That was prior to the floor consideration or</p> <p>25 committee of the whole consideration of SB 14?</p>	<p style="text-align: right;">171</p> <p>1 A. Yes.</p> <p>2 Q. It wanted to enforce Senate Bill 14, did it</p> <p>3 not?</p> <p>4 A. Yes.</p> <p>5 Q. Why did you make -- do you see -- strike that.</p> <p>6 Do you see that in this e-mail you made</p> <p>7 the suggestion that the Legislature might consider</p> <p>8 adding a longer list of acceptable photo IDs?</p> <p>9 A. Yes. It says to increase the chances, you</p> <p>10 might consider adding a list of additional IDs.</p> <p>11 Q. And you proposed using language in Georgia's</p> <p>12 law, which includes ID issued by the federal government,</p> <p>13 state government or local government within the state?</p> <p>14 A. That's correct.</p> <p>15 Q. And you also suggested at a minimum, you might</p> <p>16 include language from Senate Bill 362 concerning valid</p> <p>17 ID issued by an agency or institution of the federal</p> <p>18 government or agency or institution of political</p> <p>19 subdivision of the state. Do you see that suggestion?</p> <p>20 A. Yes.</p> <p>21 Q. Why did you suggest adding these forms of ID to</p> <p>22 the bill?</p> <p>23 A. Again, I think we know that Georgia law was</p> <p>24 precleared, and so closer to other precleared laws, the</p> <p>25 better in terms of again increasing chances. It doesn't</p>
<p style="text-align: right;">170</p> <p>1 A. I don't have the history of the bill passage,</p> <p>2 so I think --</p> <p>3 Q. The best of your recollection.</p> <p>4 A. I can't remember the date the bill passed the</p> <p>5 Senate.</p> <p>6 MS. WESTFALL: Could we go off the record</p> <p>7 for one second?</p> <p>8 (Brief discussion off the record.)</p> <p>9 Q. (By Ms. Westfall) Did you ever share your view</p> <p>10 that preclearance was doubtful with Mr. Dewhurst?</p> <p>11 A. I can't recall.</p> <p>12 Q. Did you share with anyone else in your office</p> <p>13 besides Mr. Brunson and Ms. Rathgeber?</p> <p>14 A. Probably not.</p> <p>15 Q. Did you share with other staff people besides</p> <p>16 Mr. Baxter, Ms. McCoy and Mr. Stinson?</p> <p>17 A. I don't recall.</p> <p>18 Q. After you sent this e-mail, were there any</p> <p>19 changes made to the bill to address any of these</p> <p>20 concerns?</p> <p>21 A. Again, I don't know for sure without seeing</p> <p>22 subsequent copies of the bill. I know the bill changed</p> <p>23 from January 22nd through final passage.</p> <p>24 Q. The Texas Legislature wanted Senate Bill 14 to</p> <p>25 be precleared, did it not?</p>	<p style="text-align: right;">172</p> <p>1 mean it was the only way to do it, but I think it's easy</p> <p>2 to argue it would increase the chances of that</p> <p>3 happening.</p> <p>4 Q. Was there any other reason besides following</p> <p>5 Georgia's footsteps that you thought this would assist</p> <p>6 in increasing the likelihood of preclearance?</p> <p>7 A. Not that I recall?</p> <p>8 Q. Were these forms of ID added to SB 14?</p> <p>9 A. No. This language is not in SB 14. There are</p> <p>10 other -- there is other language from the Georgia law</p> <p>11 and the Texas law, but not this underlying language in</p> <p>12 Exhibit 164.</p> <p>13 Q. Are these IDs that you mention in your e-mail</p> <p>14 less secure than the other IDs that ultimately made it</p> <p>15 into SB 14?</p> <p>16 A. In my opinion -- is the underlying text less</p> <p>17 secure than the final version of SB 14, is that the</p> <p>18 question?</p> <p>19 Q. The question is: Are the IDs that you propose</p> <p>20 adding to SB 14 less secure than the IDs that were</p> <p>21 ultimately included in Senate Bill 14?</p> <p>22 A. I think the short answer is yes. I think to</p> <p>23 the extent you allow increasing number of</p> <p>24 identifications, it increases the chance of confusion on</p> <p>25 the part of the election poll workers and on the part of</p>

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<p style="text-align: right;">173</p> <p>1 the voters. So to that extent, I would say yes, it is</p> <p>2 somewhat less secure.</p> <p>3 Q. And it's your testimony that it's less secure</p> <p>4 because they're more forms of ID which create more</p> <p>5 confusion?</p> <p>6 A. That is ones reason.</p> <p>7 Q. Are there other reasons that you're aware of?</p> <p>8 A. It's more types of identification that could be</p> <p>9 forged. It's presumably a large number of local, state</p> <p>10 and federal ID cards and entities that would issue those</p> <p>11 cards. You know, especially in Texas, we have 254</p> <p>12 counties. I think that would fall under political</p> <p>13 subdivision of the state.</p> <p>14 Some counties, frankly, barely have</p> <p>15 computers, much less, you know, sophisticated</p> <p>16 identification cards for their employees or to other</p> <p>17 people to whom they would issue this card. So yeah, I</p> <p>18 think this is a less -- adding this language would be</p> <p>19 less secure.</p> <p>20 Q. So how would a forged student ID that had a</p> <p>21 picture of the student, that wasn't issued by the</p> <p>22 university, that was issued by Kinko's, that voter goes</p> <p>23 in to vote, how is that less secure?</p> <p>24 A. I don't understand the question.</p> <p>25 Q. Doesn't that card show the person's identity?</p>	<p style="text-align: right;">175</p> <p>1 who I am, name is there, here's my picture?</p> <p>2 MS. HALPERN: Objection, misstates prior</p> <p>3 testimony, and mischaracterizes prior testimony.</p> <p>4 Q. (By Ms. Westfall) You may answer.</p> <p>5 A. Yeah. I think the point of requiring a photo</p> <p>6 ID is to increase the connection for the electoral</p> <p>7 official between the ID presented and the person</p> <p>8 presenting it. And the list of acceptable forms of ID</p> <p>9 narrows or expands the ability of those to be reliable</p> <p>10 identification.</p> <p>11 Q. Would -- I guess turning back to the talking</p> <p>12 points that you did on SB 14, to what you just</p> <p>13 testified, would adding these forms of ID that you</p> <p>14 suggest in this e-mail thwart or interfere with any of</p> <p>15 those purposes?</p> <p>16 A. So you're referring to Exhibit 163 and</p> <p>17 attachments of that, thereto?</p> <p>18 MS. HALPERN: Are you referring to --</p> <p>19 MS. WESTFALL: The e-mail that he just</p> <p>20 testified to.</p> <p>21 A. So the documents described in Exhibit 164, do</p> <p>22 those undermine the goals laid out in Exhibit 163?</p> <p>23 Q. (By Ms. Westfall) Correct. Thank you.</p> <p>24 A. Well, sure, for the first one. I mean, the</p> <p>25 first legitimate state interest is deterring and</p>
<p style="text-align: right;">174</p> <p>1 You can see the picture and you can see the person.</p> <p>2 A. A forged student ID with a photograph would be</p> <p>3 less secure, yes. In my opinion, it's more easily</p> <p>4 forged than the types of documents or IDs permissible</p> <p>5 under SB 14.</p> <p>6 Q. But the purpose of the photo ID requirement is</p> <p>7 so that the voter can prove I am who I say I am, this is</p> <p>8 my picture, I am me.</p> <p>9 A. Right. On a secure, widely recognizable form</p> <p>10 of ID. And there are I don't know how many colleges in</p> <p>11 Texas, or in the instance of eligible voters from Texas</p> <p>12 who reside in Texas, and intend to reside in Texas,</p> <p>13 continue school out of state or private universities,</p> <p>14 the pool of potential IDs and the ability to forge those</p> <p>15 gets much easier, I think.</p> <p>16 MS. HALPERN: Counsel, did you want to</p> <p>17 take a break? Before you said you did.</p> <p>18 MS. WESTFALL: No. Let's keep going</p> <p>19 Otherwise, we'll go past -- we can keep going a little</p> <p>20 way.</p> <p>21 Q. (By Ms. Westfall) So isn't the purpose of the</p> <p>22 photo ID requirement so that the person can show I am</p> <p>23 who I am?</p> <p>24 MS. HALPERN: Objection-</p> <p>25 Q. (By Ms. Westfall) And you're on the rolls, I am</p>	<p style="text-align: right;">176</p> <p>1 detecting fraud. As I mentioned, I think it's safe to</p> <p>2 say the more forms of ID permissible, the more potential</p> <p>3 fraud. Because the electoral officials are not familiar</p> <p>4 with those forms of ID because there are fewer security</p> <p>5 protections, et cetera.</p> <p>6 Possibly improving and modernizing</p> <p>7 election procedures, voter rolls is probably not. And</p> <p>8 protecting public confidence in the elections, again I</p> <p>9 think -- I think if you have a long -- the longer the</p> <p>10 list of types of IDs, potentially that would make a</p> <p>11 voter less confident that they're accurate IDs or</p> <p>12 acceptable IDs, but I don't know that.</p> <p>13 Q. So how would it that if you were on the voter</p> <p>14 rolls and you appear in a precinct and suppose you</p> <p>15 shouldn't be on the voter roll, you're ineligible now,</p> <p>16 how does walking in with a fraudulent student ID, how</p> <p>17 does allowing that ID to be used, interfere with the --</p> <p>18 or create fraud in the system? You're already on the</p> <p>19 rolls, the purpose of the photo ID bill is to show a</p> <p>20 photo of the voter and show I am who I am.</p> <p>21 A. Right.</p> <p>22 Q. I'm here on your rolls.</p> <p>23 A. Right.</p> <p>24 Q. How do any of the problems with the IDs you</p> <p>25 just described remedy that or prevent that?</p>

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<p style="text-align: right;">177</p> <p>1 MS. HALPERN: Objection, compound.</p> <p>2 Q. (By Ms. Westfall) You may answer.</p> <p>3 A. So the -- so I understand, so the -- again, the</p> <p>4 underlying -- additional forms of ID described by</p> <p>5 Exhibit 164, how does allowing those improve security?</p> <p>6 Q. How does it interfere with the ability of</p> <p>7 election officials to check your ID, see who you are,</p> <p>8 see that you're on the rolls and allow you to vote a</p> <p>9 regular ballot?</p> <p>10 A. Again, so the question is how does it make it</p> <p>11 less secure, and I think the answer is, as I said,</p> <p>12 potentially the more forms of ID, especially from any</p> <p>13 political subdivision in the state is more easily forged</p> <p>14 or less familiar to the poll worker. So therefore, less</p> <p>15 reliable as a form of ID.</p> <p>16 Q. Turning back now to Exhibit 164, when did you</p> <p>17 draft the Standard of Review by the Department of</p> <p>18 Justice at TK00262651?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you draft that before the session started</p> <p>21 in 2010?</p> <p>22 A. I don't recall.</p> <p>23 Q. Why did you draft that document?</p> <p>24 A. To brief people who are unfamiliar on the</p> <p>25 Standard of Review by the Department of Justice.</p>	<p style="text-align: right;">179</p> <p>1 or African-American voters possess the forms of ID in SB</p> <p>2 14?</p> <p>3 A. Not that I'm personally aware of.</p> <p>4 Q. Did you or anyone talk to legislators</p> <p>5 representing who were the candidates of choice of</p> <p>6 minority voters about their position on SB 14?</p> <p>7 A. Did I speak to them?</p> <p>8 Q. Did you or anyone you know speak to anyone</p> <p>9 about their position on SB 14?</p> <p>10 MS. HALPERN: Objection, vague.</p> <p>11 A. I don't know who other people spoke to, but at</p> <p>12 least in the public debate, there was several hours of</p> <p>13 back and forth between members of all races and parties.</p> <p>14 Q. (By Ms. Westfall) Other than the public debate,</p> <p>15 are you aware of any other conversations with members of</p> <p>16 the Legislature representing voters who were minority</p> <p>17 voters.</p> <p>18 A. I was not in those conversations.</p> <p>19 Q. Do you see that you discuss less retrogressive</p> <p>20 alternatives in your standard of review?</p> <p>21 A. Yes.</p> <p>22 Q. Were any additional forms of ID considered to</p> <p>23 address this point?</p> <p>24 A. There were lots of forms of identification</p> <p>25 considered. Again, publicly, I don't know what all was</p>
<p style="text-align: right;">178</p> <p>1 Q. Were you directed to draft that document?</p> <p>2 A. I don't believe I was, but I can't recall for</p> <p>3 sure.</p> <p>4 Q. Did you just do this of your own volition?</p> <p>5 A. Possibly, yes.</p> <p>6 Q. Did Mr. Dewhurst ask you to draft this?</p> <p>7 A. I don't recall that he did.</p> <p>8 Q. Under standard review under retrogressive</p> <p>9 effect, did the Legislature, subsequent to your drafting</p> <p>10 of this document, seek information to determine whether</p> <p>11 Hispanic and African-American voters are less likely to</p> <p>12 possess a photo ID?</p> <p>13 A. I'm not sure. I can't recall from the public</p> <p>14 testimony if that was mentioned or not. I know it was</p> <p>15 discussed at length amongst Senators in debate -- on the</p> <p>16 house floor during the debate.</p> <p>17 Q. Is there anything not in the public discussion</p> <p>18 about analysis of this question?</p> <p>19 A. Not that I'm aware of. I mean, what is not in</p> <p>20 the public discussion is evidence of a particular people</p> <p>21 who would have been unable to. I don't remember seeing</p> <p>22 or hearing of any particular individuals who were unable</p> <p>23 to obtain any ID.</p> <p>24 Q. But were there any private conversations among</p> <p>25 legislators to seek information about whether Hispanic</p>	<p style="text-align: right;">180</p> <p>1 considered in private or by sponsors outside of my</p> <p>2 knowledge.</p> <p>3 Q. Can you identify any attempts to make the bill</p> <p>4 less retrogressive or as least burdensome as possible to</p> <p>5 voters and still accomplish the goals of the</p> <p>6 Legislature?</p> <p>7 A. Sure. There were additional forms of ID added</p> <p>8 by amendment on the floor. There were broad exemptions</p> <p>9 for certain class of people. There were free election</p> <p>10 identification cards issued. I think all of those</p> <p>11 things were designed to be less burdensome for voters.</p> <p>12 Q. What were the forms of ID that were added?</p> <p>13 A. I don't have a final copy of the bill. I know</p> <p>14 concealed handgun license was one form. There may have</p> <p>15 been others that I'm forgetting without the bill.</p> <p>16 Q. Are the seven forms of ID under SB 14 as</p> <p>17 enacted, Texas driver license, Texas personal ID, EIC,</p> <p>18 concealed handgun license, military ID, citizenship --</p> <p>19 U.S. citizenship or passport, U.S. passport?</p> <p>20 A. Without -- those sound right, but without</p> <p>21 having the final bill in front of me, I can't say a</p> <p>22 hundred percent yes.</p> <p>23 MS. HALPERN: Counsel, I would like to</p> <p>24 take a break.</p> <p>25 MS. WESTFALL: Okay. Let's take a break.</p>

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<p style="text-align: right;">181</p> <p>1 (Recess from 2:41 to 2:51 p.m.)</p> <p>2 Q. (By Ms. Westfall) We're back on the record,</p> <p>3 and we were talking about Exhibit 164.</p> <p>4 A. Correct.</p> <p>5 Q. And in particular, the standard of review that</p> <p>6 you had drafted at TX00262651.</p> <p>7 A. Okay.</p> <p>8 Q. Do you see that you flagged the issue of</p> <p>9 whether the law includes mitigating effects?</p> <p>10 A. Yes.</p> <p>11 Q. And one of the things you list is education</p> <p>12 efforts targeted at minority communities?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall whether SB 14 included any</p> <p>15 targeted education efforts at minority communities as</p> <p>16 signed into law?</p> <p>17 A. Without having the final version in front of</p> <p>18 me, my memory is that Secretary of State was given</p> <p>19 authority to implement an education program. And the</p> <p>20 need to do that and minority training I think was</p> <p>21 discussed during debate over the bill.</p> <p>22 Q. But the discretion was given to the Secretary;</p> <p>23 is that correct?</p> <p>24 A. I think that is correct.</p> <p>25 Q. It wasn't provided in the bill itself --</p>	<p style="text-align: right;">183</p> <p>1 A. Well, it requires the voter registrar of every</p> <p>2 county that maintains a website to include information,</p> <p>3 so that would presumably include minority majority</p> <p>4 counties.</p> <p>5 Q. But to your knowledge, it's not a targeted</p> <p>6 voter education program; is that correct?</p> <p>7 A. Statute -- statutory language does not have</p> <p>8 specific reference to minorities.</p> <p>9 Q. In SB 14, does it include a provision about</p> <p>10 providing photo IDs in isolated and impoverished areas?</p> <p>11 A. I don't see specific references, again, other</p> <p>12 than the fact that those individuals would fall under</p> <p>13 general directions to county officials and the Secretary</p> <p>14 of State.</p> <p>15 Q. But to your knowledge, SB 14 did not have</p> <p>16 targeted -- a targeted program for isolated and</p> <p>17 impoverished areas; is that right?</p> <p>18 A. The statutory language did not, and I'm not</p> <p>19 certain if the Secretary of State or DPS or other state</p> <p>20 agencies have separate authority.</p> <p>21 Q. Does SB 14 -- any -- include any other programs</p> <p>22 designed to minimize the impact on minority voters --</p> <p>23 targeted on minority voters?</p> <p>24 A. I think the SB 14 has measures designed to</p> <p>25 broaden access to identifications and to exempt certain</p>
<p style="text-align: right;">182</p> <p>1 A. I think --</p> <p>2 Q. -- is that correct?</p> <p>3 A. I think that is correct, although I believe</p> <p>4 there was also reference requiring the Secretary of</p> <p>5 State to coordinate with nonprofits and other groups in</p> <p>6 developing the education efforts.</p> <p>7 Q. Do you see also that you listed programs</p> <p>8 designed to provide photo ID --</p> <p>9 (Noise interruption as someone enters</p> <p>10 room.)</p> <p>11 THE REPORTER: I'm sorry.</p> <p>12 MS. WESTFALL: Let's go off the record for</p> <p>13 one second.</p> <p>14 (Brief discussion off the record.)</p> <p>15 MS. WESTFALL: Could you mark this?</p> <p>16 (Exhibit 165 marked for identification.)</p> <p>17 Q. (By Ms. Westfall) You've been handed what's</p> <p>18 been marked as 165. Do you recognize this?</p> <p>19 A. 165 is a copy of SB 14.</p> <p>20 Q. This is the version that was signed into law;</p> <p>21 is that correct?</p> <p>22 A. Appears so.</p> <p>23 Q. So turning your attention now to Exhibit 165,</p> <p>24 are there education efforts targeted at minority</p> <p>25 communities in this bill?</p>	<p style="text-align: right;">184</p> <p>1 classes of individuals which might include minority</p> <p>2 voters.</p> <p>3 Q. Who were those exempted classes of voters?</p> <p>4 A. Well, in the case of the election</p> <p>5 identification cards, it would be voters who cannot</p> <p>6 afford and do not have other forms of photo ID. So to</p> <p>7 the extent minority voters fall under that group of</p> <p>8 people, they would be included.</p> <p>9 Q. Any other way?</p> <p>10 A. I thought there was exemptions, but I'm having</p> <p>11 trouble finding them.</p> <p>12 THE REPORTER: I'm sorry?</p> <p>13 A. I thought there were other exemptions, but I'm</p> <p>14 having trouble finding them.</p> <p>15 Q. (By Ms. Westfall) Is there an exemption for</p> <p>16 certain persons with disabilities who obtained</p> <p>17 documentation from the Social Security Administration --</p> <p>18 A. Yeah.</p> <p>19 Q. -- or the Veterans' Affairs Department?</p> <p>20 A. Yes, I believe there is.</p> <p>21 Q. And how does that relate to your contention</p> <p>22 that those are targeted to minority voters?</p> <p>23 A. It doesn't. My contention is that minority</p> <p>24 voters might be a class within these voters, the classes</p> <p>25 you described, for -- for disabled voters. For free</p>

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<p style="text-align: right;">185</p> <p>1 election identification cards, to the extent the</p> <p>2 position is that minorities are more likely to be poor,</p> <p>3 then I think providing free ID cards would be directly</p> <p>4 targeted to them.</p> <p>5 Q. Do you see that you also list as mitigating</p> <p>6 effects, photo IDs free of charge and widely available</p> <p>7 on the standard of review?</p> <p>8 A. Yes.</p> <p>9 Q. At the time SB 14 was under consideration by</p> <p>10 the Senate, did you consider that EICs would be as</p> <p>11 implemented by DPS widely available?</p> <p>12 A. Yes.</p> <p>13 Q. What was the basis of that conclusion?</p> <p>14 A. Basis of concluding that EICs would be --</p> <p>15 Q. Would be widely available.</p> <p>16 A. -- widely available? Because they are to be</p> <p>17 administered by a state agency with jurisdiction across</p> <p>18 the state.</p> <p>19 Q. Isn't it true that at the time SB 14 was under</p> <p>20 consideration by the Senate and subsequent even into</p> <p>21 2012, that 80 counties did not have a driver license</p> <p>22 office?</p> <p>23 A. I don't know the number of counties exactly</p> <p>24 without those offices, but I do know that there are</p> <p>25 mobile efforts and extended hours and other provisions</p>	<p style="text-align: right;">187</p> <p>1 Indiana?</p> <p>2 A. Was there consideration given to that? I think</p> <p>3 there probably was. I don't remember specific debate</p> <p>4 from the floor, but I would assume it was.</p> <p>5 And something occurs to me regarding your</p> <p>6 last question about IDs being widely available. If you</p> <p>7 point to the 80 counties' geography that you said at the</p> <p>8 time did not have offices, it's still not clear to me</p> <p>9 what percentage of Texans lived in those counties. My</p> <p>10 understanding is that the vast majority of Texas'</p> <p>11 population lives in counties that do have those offices.</p> <p>12 Q. When did you learn that fact?</p> <p>13 A. When did I learn that?</p> <p>14 Q. Assuming that that's right, when did you learn</p> <p>15 that fact?</p> <p>16 A. I believe that was discussed on the floor</p> <p>17 during debate.</p> <p>18 Q. Were there any changes to the bill considered</p> <p>19 as a result of your memo on the standard of review or</p> <p>20 your cover e-mail at Exhibit 164?</p> <p>21 A. I -- to the extent there were changes to the</p> <p>22 bill between this e-mail and the final version, I can't</p> <p>23 say to what extent those changes were a result of this</p> <p>24 memo. I don't pretend that I have that much influence,</p> <p>25 but there were changes to the bill.</p>
<p style="text-align: right;">186</p> <p>1 that DPS has undertaken to implement the law.</p> <p>2 Q. Just to go back to the question that I posed to</p> <p>3 you: At the time that SB was under consideration by the</p> <p>4 Senate --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- about 80 counties did not have driver</p> <p>7 license offices at that time; isn't that correct?</p> <p>8 A. I don't remember the number. I know there was</p> <p>9 discussion of it during floor debate about the number</p> <p>10 and whether it was accessible enough, but I don't</p> <p>11 remember that number.</p> <p>12 Q. Plans to put into place mobile EIC units did</p> <p>13 not get underway until long after SB 14 was signed into</p> <p>14 law; isn't that correct?</p> <p>15 A. I don't know the date that those started.</p> <p>16 Q. It was after the date that SB 14 was signed</p> <p>17 into law; isn't that correct?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you see that it also lists, "How does this</p> <p>20 compare to the law of other states, is it less</p> <p>21 restrictive or more"?</p> <p>22 A. Yes.</p> <p>23 Q. Was consideration given to whether the Texas</p> <p>24 voter ID law was less restrictive, equally restrictive</p> <p>25 or more restrictive than the laws in Georgia and</p>	<p style="text-align: right;">188</p> <p>1 Q. Were any of these IDs that you suggested on the</p> <p>2 cover e-mail of 164 added?</p> <p>3 A. No, we don't have -- and again, I think the --</p> <p>4 the IDs described there, the underlined language on</p> <p>5 Exhibit 164, meaning, all federal, state, local,</p> <p>6 political subdivision IDs, it's considerably less secure</p> <p>7 because of the reasons we mentioned. They don't have</p> <p>8 expiration dates. They don't have bar codes. They</p> <p>9 could be, you know, produced by any -- an innumerable</p> <p>10 almost number of entities in Texas, given the large</p> <p>11 number of counties and local subdivisions within those</p> <p>12 counties.</p> <p>13 MS. WESTFALL: I'm going to object to your</p> <p>14 response as nonresponsive and ask you again.</p> <p>15 Q. (By Ms. Westfall) Were any of the IDs that you</p> <p>16 proposed in the e-mail in Exhibit 164 adopted in the</p> <p>17 final version of Senate Bill 14?</p> <p>18 A. The final version of Senate Bill 14 does not</p> <p>19 include this language.</p> <p>20 MS. WESTFALL: Could you mark this?</p> <p>21 (Exhibit 166 marked for identification.)</p> <p>22 Q. (By Ms. Westfall) You've been handed what's</p> <p>23 been marked as Exhibit 166. Do you recognize this</p> <p>24 document?</p> <p>25 A. It looks like an e-mail, two e-mails. One from</p>

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<p style="text-align: right;">189</p> <p>1 me to some Senate staffers. And then, again, an</p> <p>2 additional e-mail from Senator Huffman's staff or to</p> <p>3 another Huffman's staffer, or I think Huffman staffer,</p> <p>4 with an attachment on possible questions and amendments</p> <p>5 likely to arise tomorrow, which would be and the day</p> <p>6 after January 24.</p> <p>7 Q. Okay.</p> <p>8 A. And again, the attachment is Janice's notes on</p> <p>9 those questions.</p> <p>10 Q. And for the record, Exhibit 166 is TX00265539</p> <p>11 through TX00265543.</p> <p>12 Who is Amanda Montagne?</p> <p>13 A. Amanda Montagne at the time worked for Senator</p> <p>14 Williams.</p> <p>15 Q. Who is Ryan LaRue?</p> <p>16 A. I believe he also worked for Senator Williams</p> <p>17 at the time.</p> <p>18 Q. Why were you sending them this e-mail?</p> <p>19 A. My memory is that Senator Williams cared about</p> <p>20 this issue and intended to help defend the bill on the</p> <p>21 floor.</p> <p>22 Q. By this issue, you mean?</p> <p>23 A. Voter ID bill.</p> <p>24 Q. Did you have advanced notice of the amendments</p> <p>25 that were going to be offered?</p>	<p style="text-align: right;">191</p> <p>1 Q. Is that your strikeout?</p> <p>2 A. I don't -- I can't say for sure.</p> <p>3 Q. Do you see on page 265540, it discuss a lower</p> <p>4 elderly threshold?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall which senators requested these</p> <p>7 exemptions for voters over the age of 70?</p> <p>8 A. I don't.</p> <p>9 Q. Do you recall what other compromises, besides</p> <p>10 these amendments listed here, bill opponents asked of</p> <p>11 bill supporters?</p> <p>12 A. Without seeing a list of the amendments and</p> <p>13 without knowing the conversations between the senators,</p> <p>14 I don't know for sure what they -- what opponents</p> <p>15 wanted.</p> <p>16 Q. Did bill opponents ask that Senate Bill 14</p> <p>17 include additional forms of ID?</p> <p>18 A. Again, without having the amendments in front</p> <p>19 of me, I just can't recall specifically. I know -- I do</p> <p>20 remember -- again, CHLs were added at the requests of</p> <p>21 Senator Hinojosa.</p> <p>22 Q. CHLs are?</p> <p>23 A. Concealed handgun license. So at least for one</p> <p>24 case, opponents to the bill suggested an alternative</p> <p>25 form of ID, and that was acceptable.</p>
<p style="text-align: right;">190</p> <p>1 A. I don't think -- sometimes in the legislature</p> <p>2 they prefile amendment. The House does that a lot more</p> <p>3 often than the Senate. I can't remember if I saw</p> <p>4 amendments ahead of the floor debates. This</p> <p>5 amendment -- I mean, this attachment says the amendments</p> <p>6 that are likely to arise. I don't know how she came to</p> <p>7 that conclusion, but I don't recall seeing any</p> <p>8 amendments ahead of time.</p> <p>9 Q. Did you speak with authors of the amendments?</p> <p>10 A. It's possible. I mean, I speak to a lot of</p> <p>11 Senate staff every day from all parties on all sides of</p> <p>12 all issues so it's possible.</p> <p>13 Q. The e-mail indicates that your suggested</p> <p>14 revisions are in red; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And this is a black-and-white document; is that</p> <p>17 right?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you recall what changes you made to</p> <p>20 Ms. McCoy's proposed responses to amendments in her</p> <p>21 Q&A's?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you see there's a strikeout on the last page</p> <p>24 at 265543?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">192</p> <p>1 Q. Do you see at page TX00265541 through 43, it</p> <p>2 appears to be questions and answers?</p> <p>3 A. Yes.</p> <p>4 Q. Were these questions that Senator Fraser</p> <p>5 expected to receive on the floor from bill opponents?</p> <p>6 A. I don't know. I didn't write the documents, so</p> <p>7 I don't know for sure.</p> <p>8 Q. Do you see at 265542, it references statistics</p> <p>9 and voter turnout studies that were in the possession of</p> <p>10 Senator Wentworth in the middle of the page?</p> <p>11 A. Yes. I think Senator Wentworth has some</p> <p>12 information on those statistics and voter turnout</p> <p>13 studies.</p> <p>14 Q. What studies did the Lieutenant Governor use to</p> <p>15 satisfy himself that Senate Bill 14 would not reduce</p> <p>16 turnout among minority voters?</p> <p>17 A. Well, Senator -- I mean, the Lieutenant</p> <p>18 Governor Dewhurst would have been a sitting member of</p> <p>19 the Committee of the Whole, so he would have reviewed</p> <p>20 all of those documents presented during that debate.</p> <p>21 Q. Can you identify any studies that he reviewed</p> <p>22 to satisfy himself that it would not reduce turnout</p> <p>23 among minority voters?</p> <p>24 MS. HALPERN: Object to the form. Object</p> <p>25 that it calls for speculation.</p>

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<p style="text-align: right;">193</p> <p>1 Q. (By Ms. Westfall) You may answer.</p> <p>2 A. I don't remember specific names of reports or</p> <p>3 studies. I do remember generally that Senator</p> <p>4 Wentworth's presentation included voter turnout in</p> <p>5 states that implemented voter ID.</p> <p>6 Q. In terms of the impact at the bottom of page</p> <p>7 265542, references the impact to voter ID on Hispanic,</p> <p>8 Black and poor voters. Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And do you see a reference that's data from</p> <p>11 Indiana?</p> <p>12 A. Yes.</p> <p>13 Q. And is it true that there was no data at that</p> <p>14 point gathered concerning Texas voters and the impact in</p> <p>15 Texas of Senate Bill 14?</p> <p>16 A. I don't know that no data had been collected --</p> <p>17 Q. But you're not aware of any, sitting here</p> <p>18 today, that you can recall?</p> <p>19 A. Well, it had not been implemented yet, so.</p> <p>20 Q. There wasn't any analysis while the bill was</p> <p>21 pending?</p> <p>22 A. Not that I can recall. But again, there was no</p> <p>23 testimony that I recall during that debate about actual</p> <p>24 individuals who would not be able to get an ID.</p> <p>25 MS. WESTFALL: I would object to that</p>	<p style="text-align: right;">195</p> <p>1 Q. (By Ms. Westfall) You've been handed what's</p> <p>2 been marked as Exhibit 167. Do you recognize this</p> <p>3 document?</p> <p>4 A. Looks like a memo, an e-mail that I wrote to</p> <p>5 several Senate staffers --</p> <p>6 Q. Well -- go ahead.</p> <p>7 A. -- relating to a proposed amendment that was</p> <p>8 likely to be offered allowing a person to vote without</p> <p>9 the photo ID but by signing an affidavit.</p> <p>10 Q. And you opined that that would gut the bill?</p> <p>11 A. It says, yes, it basically guts the bill.</p> <p>12 Q. How would it gut the bill?</p> <p>13 A. It means photo IDs are not necessary. And to</p> <p>14 the extent that this bill requires photo IDs at the</p> <p>15 poll, that amendment would say they're really not.</p> <p>16 Q. Why did you mention the DOJ loves affidavits?</p> <p>17 A. I don't recall specifically. I assume it was</p> <p>18 because they reference that language in other</p> <p>19 preclearance reports.</p> <p>20 Q. Did you believe that affidavits were relevant</p> <p>21 to analysis of SB 14 under Section 5 of the Voting</p> <p>22 Rights Act?</p> <p>23 A. I -- I can't recall specifically. I can say</p> <p>24 that all previous preclearance opinions are relevant</p> <p>25 whether future laws are going to be precleared, and that</p>
<p style="text-align: right;">194</p> <p>1 response as nonresponsive.</p> <p>2 Q. (By Ms. Westfall) Turning back to Texas</p> <p>3 00265543, I asked you about the strikeout before, and I</p> <p>4 believe you did not -- you did not make that strikeout;</p> <p>5 is that correct?</p> <p>6 A. I don't recall whether I did or not.</p> <p>7 Q. Do you know who would have made that strikeout?</p> <p>8 A. No. I mean, the e-mail says attached are</p> <p>9 Janice's notes, so I presume it would be Janice or</p> <p>10 someone Janice knows. And it may have been me. I</p> <p>11 honestly can't remember.</p> <p>12 Q. Did you agree with the strikeout that's</p> <p>13 identifying particular numbers of voters without ID</p> <p>14 might be, quote, potentially confusing, unquote?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you anticipate that legislators might want</p> <p>17 to know the number of voters impacted by Senate Bill 14?</p> <p>18 A. Yes. And again, there -- I'm sure there was</p> <p>19 debate about that. It was a big part of the debate on</p> <p>20 the floor before the Committee of the Whole.</p> <p>21 Q. What did bill supporters do to respond to those</p> <p>22 questions?</p> <p>23 A. I can't remember specifics, all the specifics.</p> <p>24 MS. WESTFALL: Could you mark this?</p> <p>25 (Exhibit 167 marked for identification.)</p>	<p style="text-align: right;">196</p> <p>1 would be true in Texas and any other state.</p> <p>2 Q. Did you consider whether an affidavit provision</p> <p>3 might impact minority voters in a favorable way in</p> <p>4 Texas?</p> <p>5 A. I don't think I did. I think the consideration</p> <p>6 was what I said there is that it guts the bill in the</p> <p>7 sense that it turns a photo ID bill into a bill that</p> <p>8 does not require photo IDs.</p> <p>9 Q. Why did you send this e-mail concerning this</p> <p>10 particular amendment and not others?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you have concern -- did you have concern at</p> <p>13 the time that there might be support for this amendment?</p> <p>14 MS. HALPERN: Objection, assumes facts not</p> <p>15 in evidence.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 A. I don't think that was my concern, but I don't</p> <p>18 recall specifically why this -- the proposed potential</p> <p>19 amendment warranted flagging. It could be that was the</p> <p>20 only amendment I was, you know, aware of might come up.</p> <p>21 I don't recall.</p> <p>22 Q. Did Texas voter registration applications</p> <p>23 require the voter's signature?</p> <p>24 A. Yes, I believe they did.</p> <p>25 Q. And so county election officials have a</p>

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<p style="text-align: right;">197</p> <p>1 signature of a voter on file in their offices; is that 2 right?</p> <p>3 A. I think that's probably right.</p> <p>4 Q. What is early voting by mail?</p> <p>5 A. A voter -- it means one of certain criteria can 6 request a ballot and complete that ballot and mail it 7 in.</p> <p>8 Q. And it's in Texas, early voting by mail is 9 not -- no excuse, correct?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Let me withdraw that question.</p> <p>12 You need to fall within a certain set of 13 categories to vote --</p> <p>14 A. Correct.</p> <p>15 Q. -- early vote in Texas; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. When a voter --</p> <p>18 MR. WHITLEY: Objection. I think you're 19 using early vote and vote by mail synonymously, and you 20 may have misstated something, but I want to make sure 21 your question is clear.</p> <p>22 THE WITNESS: That's a good point.</p> <p>23 MS. WESTFALL: Thank you for the 24 clarification, Counsel.</p> <p>25 Q. (By Ms. Westfall) When a voter votes early</p>	<p style="text-align: right;">199</p> <p>1 Q. (By Ms. Westfall) Do you recognize these 2 documents?</p> <p>3 A. Let's see. Exhibit 168 is an e-mail from 4 someone named Brent Connett. I don't know to whom, to 5 himself, but then that e-mail is in the possession looks 6 like Jason Baxter sent it to me, and I replied to all, 7 to those parties. Anyway, regarding suggested talking 8 points on election integrity. And then me advising 9 caution. And then 169 is the underlying e-mail, I 10 suppose, from Brent Connett to -- it says addressed to 11 Senators. And then there's an attachment analyses and 12 talking points on election integrity.</p> <p>13 MS. WESTFALL: And for the record, Exhibit 14 168 is Texas 00081510. Exhibit 169 is Texas 00080568 15 through 80572. Actually, '3. Sorry.</p> <p>16 Q. (By Ms. Westfall) Did the Texas Conservative 17 Coalition that wrote the attachment to Mr. Baxter's 18 e-mail express support for voter photo ID requirements?</p> <p>19 A. It appears that, yes, they did.</p> <p>20 Q. Did the coalition urge adoption of such a 21 requirement as a means of combating noncitizens from 22 registering to vote?</p> <p>23 A. I'm not seeing that language, but it must be in 24 there, because in my e-mail I say that's not what the 25 bill is about, to avoid that language. But I'm not</p>
<p style="text-align: right;">198</p> <p>1 by -- actually, what's the difference between voting 2 early by mail and absentee voting?</p> <p>3 A. I believe, as far as I know, they're the same. 4 Absentee voting and mail-in voting are the same. And 5 your -- if the question is, can only certain categories 6 of people cast a mail-in ballot, the answer is yes. 7 It's a pretty broad category of people. Those, I think, 8 over 65, those with a disability, although I'm sure that 9 term is defined. It think it's largely self-defined by 10 the voter. And those who are residents to Texas but 11 temporarily out of the state.</p> <p>12 Q. For a mail-in ballot, how does the ballot board 13 determine whether the ballot is valid?</p> <p>14 A. I guess I'm not a hundred percent clear. I 15 would imagine they compare signatures.</p> <p>16 MS. WESTFALL: Could you also mark this 17 one? These two, doesn't matter what order. 18 (Exhibit 168 and 169 marked for 19 identification.)</p> <p>20 Q. (By Ms. Westfall) You've been handed what's 21 been marked as 168 and 169.</p> <p>22 MS. HALPERN: I've only been handed 169 23 apparently.</p> <p>24 MS. WESTFALL: Didn't throw it far enough.</p> <p>25 MS. HALPERN: There you go.</p>	<p style="text-align: right;">200</p> <p>1 finding it in the attachment.</p> <p>2 Q. Thank you. Was combating noncitizen voter 3 registration one of the purposes of SB 14?</p> <p>4 A. I think the purpose was to combat ineligible 5 voters.</p> <p>6 Q. Did that include non-U.S. citizens from 7 participating in elections?</p> <p>8 A. I think noncitizens are a subset of ineligible 9 voters.</p> <p>10 Q. So the answer would be yes?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that at 168, you commented on the 13 talking points, and you advised or recommended to 14 Mr. Baxter and Ms. Montagne and Mr. LaRue that talk of 15 the illegals and registration, to quote you, "be 16 avoided." Do you see that?</p> <p>17 A. It doesn't say be avoided. It says, "Avoid 18 talking about illegals and registration. We're not 19 doing this to crack down on illegals but to generally 20 strengthen the security and integrity of the voting 21 process. This is a bill about voting, not registering, 22 although some mention of registration fraud is useful to 23 show that fraud exists generally in the system."</p> <p>24 Q. Why did you write this?</p> <p>25 A. I think I wrote it -- I'm not familiar even</p>

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<p style="text-align: right;">201</p> <p>1 today, and I don't think I was familiar with the group 2 who sent the document to Texas Conservative Coalition or 3 Mr. Brent Connett. I don't think I directly received 4 this information. All the people that I include on that 5 e-mail worked for Senator Williams, and so I'm not clear 6 who received it beyond Senator Williams. But I think 7 what I say in the e-mails is what I meant and it's true 8 today, despite some efforts by some to characterize it 9 as such, it's not an anti-immigrant or anti-illegals, 10 quote/unquote, illegals bill. It's about strengthening 11 the security and the integrity of the voting system. So 12 to the extent I was advising Senate staff who were then 13 advising their boss, I wanted to make sure that people 14 were careful about how they couched the bill, especially 15 if they weren't the sponsor of the bill, and that they 16 used rhetoric that was responsible and accurate.</p> <p>17 Q. How do you know that cracking down on illegals 18 and registration was not a purpose of Senate Bill 14?</p> <p>19 A. It was never -- I only know what I know from my 20 conversations with senators and staff and what I 21 witnessed publicly, and at no time did I see or witness 22 any of the above-mentioned people talk about immigration 23 or illegal or any of the other similar rhetoric as the 24 purpose of the bill.</p> <p>25 Q. Is it fair to say that there were some groups</p>	<p style="text-align: right;">203</p> <p>1 members on both sides of the issue across the states.</p> <p>2 Q. And were you concerned about quality of the 3 dialogue or any other repercussions that might come from 4 this type of rhetoric being used with regard to SB 14?</p> <p>5 A. Yeah, I think it's safe to say that I was 6 concerned about the quality of the rhetoric. Anytime 7 you have a bill with all the Republicans on one side and 8 all the Democrats on the other, it tends to be 9 contentious, and the rhetoric in those situations can 10 escalate. And I try to see myself as a sort of neutral 11 observer and legal advisor on these matters. And to the 12 extent we can avoid overheated rhetoric, that's always 13 in the best interest of the Legislature, I think.</p> <p>14 Q. And beside Exhibit 169 and the cover e-mail 15 sent by Brent Connett and the attachment thereto, had 16 you heard other senators or their staff frame SB 14 as 17 something that would combat illegal voting and illegals 18 from voting and participating in elections?</p> <p>19 A. I'm sure there are instances -- what I recall 20 is statements to combat ineligible voters. And it's 21 possible that noncitizens were listed as part of those, 22 that group, but I can't remember specific instances now.</p> <p>23 Q. If there were some supporters of SB 14 who 24 thought it would go after combating illegals and 25 noncitizens voting, and that was a faction who supported</p>
<p style="text-align: right;">202</p> <p>1 like the Texas Conservative Coalition who believed that 2 Senate Bill 14 would further the purpose of cracking 3 down on noncitizens voting?</p> <p>4 A. I guess, yes, there's groups who interpret the 5 bill all manner of ways.</p> <p>6 Q. And you just testified that you thought a more 7 responsible way was to discuss it in terms of, as you 8 mention in the e-mail, as it relates to voting. Why 9 would it be irresponsible to talk about Senate Bill 14 10 cracking down on illegals or noncitizens voting?</p> <p>11 A. Well, it's just inaccurate for one. Again, I 12 think as I said here, that was not my understanding of 13 the bill's purpose or intent. So to the extent it's 14 characterized as the intent, that's inaccurate. And 15 again, we all know that there's inflammatory language 16 used by parties on both sides. And certainly, the term 17 illegal and other terms used by people in and around the 18 Capitol are offensive to others. And to the extent we 19 could avoid inflammatory rhetoric, that's always my 20 interest.</p> <p>21 Q. And why were you concerned with the possibility 22 that inflammatory rhetoric, as you called it, would be 23 used in the SB 14?</p> <p>24 A. There was inflammatory rhetoric on the floor of 25 the Senate between senators, so of course there was from</p>	<p style="text-align: right;">204</p> <p>1 SB 14, why wouldn't you let that message continue in the 2 public domain?</p> <p>3 A. Assuming that we're talking about people who 4 are not citizens of Texas, I think it's fair to say we 5 should not allow noncitizens of Texas to vote in Texas 6 elections. That is part of the intent of SB 14. But as 7 I said, the group of ineligible voters is much larger 8 than that.</p> <p>9 To the extent you want to talk about 10 people from -- not -- that are not citizens of Texas 11 voting in Texas elections and that being a problem, that 12 seems totally fair to me.</p> <p>13 Q. But here in this e-mail in 168, you were 14 concerned about talk about illegals. Who were you 15 referring to when you said illegals?</p> <p>16 A. I think I -- it appears I was quoting from the 17 document, and I'm also referring -- suggesting that 18 there's not a discussion about registration, because 19 neither of those things are the point of this bill.</p> <p>20 Q. But by illegals, were you referring to persons 21 who were not U.S. citizens?</p> <p>22 A. I don't know. I don't know. Again, I think my 23 impression is that I was quoting from the document, and 24 so I'm not sure what illegals referred to. Yes, 25 generally speaking, I think people who use the term</p>

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<p style="text-align: right;">205</p> <p>1 refer to people who are not United States citizens.</p> <p>2 Q. Did you have any concern or was any of your</p> <p>3 motivation in writing the e-mail at Exhibit 168 based on</p> <p>4 concern that talk about illegals could be construed as</p> <p>5 racially discriminatory?</p> <p>6 A. I don't know if that was a specific concern of</p> <p>7 mine. I think the concern, again, was that people</p> <p>8 accurately framed the bill about what the bill actually</p> <p>9 did and not what one line of one talking -- one, you</p> <p>10 know, document of talking points from an outside group</p> <p>11 said it might be about, but that it'd be based on what</p> <p>12 the senators actually said and the sponsors of the bill</p> <p>13 actually said.</p> <p>14 Q. And you -- so the purpose of the e-mail was to</p> <p>15 bring it back to the public discussion about the</p> <p>16 purposes of the bill and not as framed by groups such as</p> <p>17 the Travis Conservative Coalition?</p> <p>18 A. Again, I can't specifically recall what I was</p> <p>19 thinking at the time that I got this, but that sounds</p> <p>20 roughly correct.</p> <p>21 Q. And what was the purpose of kind of reframing</p> <p>22 the debate and keeping it on the public purposes of</p> <p>23 Senate Bill 14?</p> <p>24 A. I don't know. I mean, I just -- I was just</p> <p>25 responding to the document that was sent to me.</p>	<p style="text-align: right;">207</p> <p>1 e-mail from me.</p> <p>2 Q. Who else would have developed this plan besides</p> <p>3 you?</p> <p>4 A. Senator Fraser and his staff, any of the</p> <p>5 senators listed here, perhaps Blaine Brunson or Julia</p> <p>6 Rathgeber.</p> <p>7 Q. But is it more likely that it came from your</p> <p>8 office given that you were the point person for the</p> <p>9 elections and voting issues?</p> <p>10 A. It's unlikely I would have done all this</p> <p>11 without significant input from the bill sponsor and the</p> <p>12 senators listed. It's not my place to tell senators</p> <p>13 what they're going to be doing during debate of a bill.</p> <p>14 Q. But was it your role to kind of organize,</p> <p>15 coordinate and communicate the plan to others?</p> <p>16 A. At least to these people, that seems fair.</p> <p>17 Q. Do you see that under "floor tasks" in the</p> <p>18 parentheses, you urge senators to emphasize the</p> <p>19 detection and deterrence of fraud and protect public</p> <p>20 confidence in elections?</p> <p>21 A. Yes.</p> <p>22 Q. Why did you stress the need for senators to</p> <p>23 emphasize those points?</p> <p>24 A. Because that was the goal of the bill as I</p> <p>25 understood it.</p>
<p style="text-align: right;">206</p> <p>1 MS. WESTFALL: Could you mark this?</p> <p>2 (Exhibit 170 marked for identification.)</p> <p>3 Q. (By Ms. Westfall) You've been handed what's</p> <p>4 been marked as 170, which is Texas 00081575. Do you</p> <p>5 recognize this document?</p> <p>6 A. Looks like an e-mail from myself to various</p> <p>7 Senate staffers and my chief of staff and policy</p> <p>8 director laying out, quote, the plan for Tuesday, which</p> <p>9 I assume would have been floor debate and the Committee</p> <p>10 of the Whole. And it lays out invited witnesses,</p> <p>11 certain roles different senators would play, some other</p> <p>12 items.</p> <p>13 Q. Who was Katie Ogden?</p> <p>14 A. Katie Ogden worked for Senator Wentworth, I</p> <p>15 believe, as chief of staff.</p> <p>16 Q. Is it fair to say that this e-mail is sort of</p> <p>17 saying that plan for testimony and how consideration of</p> <p>18 the bill would occur?</p> <p>19 A. To the extent you can have a plan and execute</p> <p>20 it on the floor of the Senate, I suppose it is an</p> <p>21 attempt to -- at best, it's an outline of how things</p> <p>22 might go.</p> <p>23 Q. Were you responsible for that outline?</p> <p>24 A. I honestly can't remember if these are my ideas</p> <p>25 or if this is me passing a message, but this is an</p>	<p style="text-align: right;">208</p> <p>1 Q. Were you concerned that they may -- they might</p> <p>2 say other things on the floor of the senate about other</p> <p>3 reasons for SB 14 being considered?</p> <p>4 A. I -- even if I had concerns about a senator --</p> <p>5 what a senator might say, there's no stopping a senator</p> <p>6 who wants to say something. But yeah, to the extent</p> <p>7 that senators were looking for direction, I think this</p> <p>8 was an attempt to remind people what the point of this</p> <p>9 bill is.</p> <p>10 Q. And again, as with the previous exhibit, were</p> <p>11 you concerned that there might on the Senate floor be</p> <p>12 expressions of support for Senate Bill 14 as a basis of</p> <p>13 cracking down on illegal non-U.S. citizens in this</p> <p>14 country?</p> <p>15 A. I don't know that I was concerned about it,</p> <p>16 again, because I don't recall that I had heard it from</p> <p>17 many senators or their staff. So I don't -- I don't</p> <p>18 think I would say it was a concern of mine.</p> <p>19 Q. So if detecting and deterring fraud and</p> <p>20 protecting public confidence was the sole purposes to</p> <p>21 SB 14, why were you having to remind staffers to let</p> <p>22 their bosses know that these were the purposes of the</p> <p>23 bill?</p> <p>24 A. One, I would say it wasn't necessarily the sole</p> <p>25 purpose, but it's in my estimation the main purpose.</p>

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<p style="text-align: right;">209</p> <p>1 But more importantly, I think senators have hundreds and 2 hundreds and hundreds of bills that they consider, and 3 while this is a very important bill, there were lots of 4 very important bills and items before the senators 5 during that session. Plus, their day jobs, plus their 6 family lives, there's a lot going on. And so we do this 7 for all sorts of bills, not just this bill, reminding 8 senators what the bill does and how it might be 9 discussed and so forth.</p> <p>10 MS. WESTFALL: We're going to stop the 11 highly confidential designation right now.</p> <p>12 MS. HALPERN: How long have we been going 13 since the last break? I lost track of where we are.</p> <p>14 MR. WHITLEY: 45 minutes.</p> <p>15 MS. WESTFALL: Okay. Okay to proceed? Do 16 you want to go off the record and have him calculate it 17 or do you want to take a break or do you want to --</p> <p>18 MS. HALPERN: Yeah, I'd like a five-minute 19 break.</p> <p>20 MS. WESTFALL: Okay. That's fine. 21 (Recess from 3:33 to 3:45 p.m.) 22 (Exhibit 171 marked for identification.)</p> <p>23 Q. (By Ms. Westfall) You've been handed what's 24 been marked 171. Do you recognize this document? 25 A. It looks like the legislative history of Senate</p>	<p style="text-align: right;">211</p> <p>1 Q. But can you imagine, sitting here today, that 2 there could have been a less restrictive bill that could 3 have accomplished that same objective of SB 14?</p> <p>4 MS. HALPERN: Objection, relevance.</p> <p>5 Q. (By Ms. Westfall) You may answer.</p> <p>6 A. There would -- there could have been a less 7 restrictive bill. I am not clear that that would have 8 been adequately secure or resulted in adequately secure 9 elections.</p> <p>10 Q. Was there any discussion in the Senate of how 11 to accomplish the goals of photo ID, generally, 12 requirements by less restrictive means?</p> <p>13 A. Yes. I think a lot of the debate in the 14 Senate, and from what I saw at the House, there was that 15 debate. Certainly opponents of the bill had a lot of 16 suggested amendments, some of which were adopted and a 17 lot of which were not. So yes, there was discussion 18 about that.</p> <p>19 Q. Which ones were adopted to make the bill less 20 restrictive?</p> <p>21 A. I'll have to look to be sure. In the Senate?</p> <p>22 Q. In the Senate.</p> <p>23 A. Two I can think of, off the top of my head, I 24 think the disability exception and the addition of CHLs 25 as acceptable ID. There may have been others. Maybe --</p>
<p style="text-align: right;">210</p> <p>1 Bill 14.</p> <p>2 Q. Right. Are you aware that Senator Fraser 3 answered "I am not advised throughout the debate on 4 Senate Bill 14"?</p> <p>5 A. I remember that he gave that answer to some 6 questions.</p> <p>7 Q. Did you know in advance that he was going to 8 take that approach, in terms of answering questions, 9 during the consideration of SB 14 in Committee of the 10 Whole?</p> <p>11 A. No.</p> <p>12 Q. Did anyone know he was going to have those 13 answers?</p> <p>14 A. I don't know.</p> <p>15 Q. In advance? Was Senator Fraser instructed by 16 anybody to answer in that manner?</p> <p>17 MS. HALPERN: Objection, calls for 18 speculation.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 A. Not that I know of.</p> <p>21 Q. Was SB 14 the least restrictive option to 22 achieve the goal of preventing voter fraud?</p> <p>23 A. I don't know. I mean, I suppose it could have 24 been more or less restrictive, but I'm not sure how that 25 would have affected the security of the elections.</p>	<p style="text-align: right;">212</p> <p>1 if I could just a second look at the bill. My memory is 2 that the language in the bill referring to recently 3 expired IDs was a product of a floor amendment from a 4 minority member. Without going through every individual 5 amendment, those are three examples I can think of.</p> <p>6 Q. Are you aware of whether Mr. Dewhurst had any 7 nonpublic conversations with other members or staff 8 about amendments to SB 14?</p> <p>9 A. I'm not aware of any conversations.</p> <p>10 Q. Were you part of any of those conversations 11 with Mr. Dewhurst and other members about amendments?</p> <p>12 MS. HALPERN: Objection, asked and 13 answered.</p> <p>14 A. Yeah. I'm not aware.</p> <p>15 Q. (By Ms. Westfall) You can answer.</p> <p>16 Were you on the Senate floor when SB 14 17 was being considered by the Committee of the Whole?</p> <p>18 A. Yes.</p> <p>19 Q. During for consideration, did Senator Williams 20 ask Ann McGeehan to conduct additional analysis of which 21 registered voters did not have driver licenses?</p> <p>22 A. I don't recall. I believe Senator Williams was 23 chair of Transportation at the time, so he would likely 24 have had an interest in issues related to DPS-issued 25 identification, but I don't recall that specific</p>

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<p style="text-align: right;">213</p> <p>1 question.</p> <p>2 Q. Were you ever a party to conversations with the</p> <p>3 Office of the Secretary of State's concerning analysis</p> <p>4 of voters without a driver license?</p> <p>5 A. Again, it's possible. I think I mentioned it</p> <p>6 earlier in my deposition. I recall a meeting with Ann</p> <p>7 McGeehan. I think it involved how people voted or</p> <p>8 whether those people, voters had identification</p> <p>9 typically. But I cannot remember the specifics of that</p> <p>10 conversation.</p> <p>11 Q. Do you recall whether that conversation was</p> <p>12 after the Senate considered SB 14 or before?</p> <p>13 A. I don't recall.</p> <p>14 MS. WESTFALL: Could you mark this?</p> <p>15 (Exhibit 172 marked for identification.)</p> <p>16 Q. (By Ms. Westfall) You've been handed what's</p> <p>17 been marked as 172. Could you take a look at this</p> <p>18 document and let me know when you've had a chance to</p> <p>19 review it.</p> <p>20 A. It looks like a chain of e-mails among</p> <p>21 Secretary of State staff regarding the number of</p> <p>22 registered voters that have not been issued a driver's</p> <p>23 license or personal ID card by DPS.</p> <p>24 Q. Have you ever seen this document before today?</p> <p>25 A. I can't recall if I have or not. I can't</p>	<p style="text-align: right;">215</p> <p>1 results prior to today, even if you hadn't seen this</p> <p>2 particular set of e-mails?</p> <p>3 A. I can't recall. Again, it's possible that Ann</p> <p>4 or the Secretary of State's Office had some of these</p> <p>5 numbers in previous meetings I had with them, but I</p> <p>6 don't recall specific instances of that.</p> <p>7 Q. You were involved in preparation of Defendants'</p> <p>8 interrogatory responses to the United States</p> <p>9 interrogatory requests in this action; is that correct?</p> <p>10 A. Yes, I believe I was.</p> <p>11 Q. And as part of those responses, did you provide</p> <p>12 information about occasions on which analysis of which</p> <p>13 voters have state-issued forms of ID had been conducted?</p> <p>14 A. I know I assisted with the interrogatories to</p> <p>15 the extent they requested documents or information from</p> <p>16 my -- from the Lieutenant Governor's Office, and I can't</p> <p>17 remember if what you described would have been a</p> <p>18 response to that or not.</p> <p>19 MS. WESTFALL: Could you please mark this?</p> <p>20 (Exhibit 173 marked for identification.)</p> <p>21 Q. (By Ms. Westfall) You have been handed what's</p> <p>22 been marked as Exhibit 173. Do you recognize this</p> <p>23 document?</p> <p>24 A. It looks like a copy of the Defendants'</p> <p>25 Objections and Responses to Plaintiffs and Intervenors</p>
<p style="text-align: right;">214</p> <p>1 recall. It seems like it would have -- if it was a</p> <p>2 public document, it would have come up in either the</p> <p>3 House or Senate debate, so it's possible I heard</p> <p>4 reference to it, but I can't recall if I saw it</p> <p>5 specifically.</p> <p>6 MS. WESTFALL: For the record, Exhibit 172</p> <p>7 is Bates number TX00 107733 through 107735.</p> <p>8 Q. (By Ms. Westfall) Have you ever seen this</p> <p>9 document not in the public debate?</p> <p>10 A. I don't think so, but I can't recall. Again,</p> <p>11 it's -- I know that I met with Ann McGeehan, and I think</p> <p>12 I talked about issues similar to this, I can't recall if</p> <p>13 this is a response to a question I raised or a question</p> <p>14 someone else raised, and I'm not a recipient anywhere on</p> <p>15 here, so I don't remember seeing the document before,</p> <p>16 no.</p> <p>17 Q. Do you see the date of this document, the dates</p> <p>18 of these e-mails?</p> <p>19 A. The document is undated, but the e-mails are</p> <p>20 January 27th, February 1st, and February 1st of 2011.</p> <p>21 Q. So is it fair to say that these e-mails were</p> <p>22 drafted after the Senate consideration of Senate Bill</p> <p>23 14?</p> <p>24 A. Yes.</p> <p>25 Q. Had you ever heard any of these numbers or</p>	<p style="text-align: right;">216</p> <p>1 First Set of Interrogatories.</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. I'm not sure I've seen this version or the --</p> <p>4 I'm assuming this is the final version. I think I saw</p> <p>5 it, but I can't be a hundred percent sure.</p> <p>6 Q. Turning your attention to Page 6, do you see</p> <p>7 you are listed?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see it indicates that you provided</p> <p>10 assistance with responses to interrogatories number 2,</p> <p>11 17, 18, 19?</p> <p>12 A. Yes.</p> <p>13 Q. Turning your attention to Page 59, which is</p> <p>14 where the response to Interrogatory 17 is located.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that you contributed responses to</p> <p>17 Interrogatory 17, 18 -- 17 and 18, which requests</p> <p>18 information about analysis of which voters don't have</p> <p>19 certain forms of ID?</p> <p>20 A. Yes.</p> <p>21 Q. Could you describe information that you</p> <p>22 provided to respond to Interrogatory requests 17 and 18?</p> <p>23 A. I don't recall that I provided any information.</p> <p>24 I can't remember that we had anything responsive or not.</p> <p>25 Q. Do you believe that the indication on Page 6,</p>

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<p style="text-align: right;">217</p> <p>1 that you provided information for numbers 2, 17, 18, and 2 19, was in error? 3 A. I don't believe that. Let me double check. It 4 says the following persons assisted generally in either 5 providing information or preparing responses. I'm not 6 sure which one of those I fall into, but I do remember 7 helping with some of these. 8 Q. Did you do any drafting, do you recall, for the 9 responses to 17 and 18? 10 A. I don't recall doing any specific drafting. 11 Q. Did you provide information? 12 A. I think it's more likely I would have provided 13 any information I had in my -- had available to me. 14 Q. And as evidenced on the face of the responses 15 to 17, which requests information about analysis of 16 voters without state forms of ID, there is no 17 information disclosed about the matching analysis in 18 Exhibit 172 which you just reviewed, correct? 19 A. Let me see. 20 MS. HALPERN: Counsel, I'm going to 21 object. I want the record to reflect that this witness 22 has not identified as having received Exhibit 172. He's 23 neither to nor from nor cc'd. 24 MS. WESTFALL: I'm asking about 25 interrogatory responses to which Defendants have</p>	<p style="text-align: right;">219</p> <p>1 documents in our possession, and I don't recall 2 providing any specific input otherwise to the response. 3 Q. (By Ms. Westfall) Do you have any information 4 about why the analysis included in Exhibit 172 was not 5 listed in this interrogatory response? 6 A. It doesn't appear to have been sent to any 7 legislator from the face of this document, this e-mail. 8 It looks like internal e-mails by the Secretary of 9 State. 10 Q. Do you have any information about why -- is it 11 your understanding the Secretary of State is a defendant 12 in this action? 13 A. I'm not sure that's correct, but I will take 14 your word for it. 15 Q. I will represent to you -- 16 A. Thank you. 17 Q. -- because the caption is condensed, the 18 Secretary of State is a defendant in this action. 19 MS. HALPERN: I'm going to object to your 20 question, Counsel, because it calls for speculation on 21 the part of this witness, since he is not a defendant 22 and obviously don't know. 23 Q. (By Ms. Westfall) You may answer. 24 A. What was the question? 25 Q. Do you know why analysis in 172 was not</p>
<p style="text-align: right;">218</p> <p>1 indicated he has participated in. 2 MS. HALPERN: Well, I understand that, and 3 I think you're mischaracterizing the interrogatory as 4 well. Certainly, this Exhibit 172 doesn't have anything 5 about demographic characteristics in it. At best, it 6 has numbers. And I, frankly, don't understand the 7 exhibit to the extent that the first row in each query, 8 which is labeled Number of Voters With No -- presumably, 9 that means driver's license or ID number -- that number 10 is the sum of the two rows below it, numbers that did 11 not match and numbers that did match. 12 MS. WESTFALL: Okay. Well, you're not 13 here to testify, but I appreciate your comments on the 14 exhibit. 15 MS. HALPERN: Well, I just don't want you 16 mischaracterizing his role in the interrogatory 17 responses, asking about number or demographic 18 characteristics, when this aide doesn't do either. He 19 didn't see the document. 20 MS. WESTFALL: Well, you're not -- you're 21 not here to testify about this document, so I'm going to 22 move to strike those comments. 23 A. So to the extent my office was asked about 24 whether we possessed documents described by 25 interrogatory 17 and 18, I don't think we had any</p>	<p style="text-align: right;">220</p> <p>1 included in the response to the Interrogatory 17 and 18? 2 A. I do not know. I know I did not provide it 3 because I do not possess it. 4 MS. WESTFALL: Could you please mark this? 5 (Exhibit 174 marked for identification.) 6 Q. (By Ms. Westfall) You've been handed what's 7 been marked as Exhibit 174. Do you recognize this 8 document? 9 A. It appears to be the Senate Journal entry 10 from -- or at least part of Wednesday, January 26, 2011. 11 Q. Did the Lieutenant Governor circulate to the 12 Republican caucus written recommendations on how to vote 13 on certain amendments? 14 A. Not that I'm aware. 15 Q. Ever? 16 A. Not that I'm aware. And as a practical matter, 17 from my experience, generally on the floor of the 18 Senate, which was every day in recent sessions, 19 amendments are not generally known until the senator 20 submits it, which could be seconds before they are 21 considered. So as a practical matter, I don't think 22 there would have been time to submit written positions 23 on how to vote on amendments. 24 Q. I direct your attention to Page 137 of this 25 Senate Journal.</p>

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<p style="text-align: right;">221</p> <p>1 A. All right.</p> <p>2 Q. Do you see that it lists a floor amendment</p> <p>3 offered by Senator Duncan --</p> <p>4 A. Yes.</p> <p>5 Q. -- related to indigent voters?</p> <p>6 A. Yes.</p> <p>7 Q. Would this amendment have required the counting</p> <p>8 of provisional ballots of individuals, voters who attest</p> <p>9 they are indigent and do not have ID?</p> <p>10 A. If the person executed an affidavit stating</p> <p>11 that they were indigent or had a religious objection or</p> <p>12 were not otherwise challenged, then it looks like, yes,</p> <p>13 that that provisional ballot would have been counted.</p> <p>14 Q. This amendment was adopted by the Senate, was</p> <p>15 it not?</p> <p>16 A. I don't have the vote on that.</p> <p>17 Q. Sir, does it indicate, on Page 138, the vote?</p> <p>18 A. I'm sorry. Yes.</p> <p>19 Q. Was it adopted by the Senate?</p> <p>20 A. Yes.</p> <p>21 Q. Was this provision included in the final</p> <p>22 version of SB 14 that's signed into law?</p> <p>23 A. I do not believe it was.</p> <p>24 Q. Had this been adopted in the final version of</p> <p>25 the bill signed into law, would it have reduced the</p>	<p style="text-align: right;">223</p> <p>1 Q. But at the time Senate Bill 14 was adopted by</p> <p>2 the Legislature, that was not the case, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Would adopting this floor amendment Number 12</p> <p>5 have interfered with the effectiveness of the bill?</p> <p>6 A. Effectiveness is pretty broad. It would have</p> <p>7 been a costlier bill. It would have potentially been a</p> <p>8 larger burden on counties or other agencies. I'm not</p> <p>9 sure what other adverse effects might have resulted.</p> <p>10 I'm not sure it would have affected the security of</p> <p>11 elections, but I can't say that it wouldn't undermine</p> <p>12 the effectiveness of the bill as a whole.</p> <p>13 Q. Given that you were aware of the cost of</p> <p>14 obtaining a birth certificate and you circulated that</p> <p>15 memo that you testified about earlier today, why did the</p> <p>16 Legislature not adopt Amendment Number 12?</p> <p>17 A. I can't recall. I don't know.</p> <p>18 Q. Turning your attention to Page 121, do you see</p> <p>19 there is an amendment that was offered by Senator Van de</p> <p>20 Putte?</p> <p>21 A. I do.</p> <p>22 Q. And this would have substituted -- well, if you</p> <p>23 could review this amendment and let me know when you've</p> <p>24 had a chance.</p> <p>25 A. (Reviewing document.) Okay.</p>
<p style="text-align: right;">222</p> <p>1 burden on poor voters?</p> <p>2 A. I think it would -- would it have reduced the</p> <p>3 burden on poor voters if this had been adopted? It's</p> <p>4 possible.</p> <p>5 Q. Are poor voters disproportionately minority?</p> <p>6 A. I don't know that to be true, but I suspect</p> <p>7 that to be true.</p> <p>8 Q. May I direct your attention to Page 118 of</p> <p>9 Exhibit 174.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that there's a floor amendment</p> <p>12 Number 12 offered by Senator Davis to prohibit state</p> <p>13 agencies from charging fees for the issuance of</p> <p>14 acceptable forms of photo ID under Senate Bill 14 or for</p> <p>15 underlying documentation --</p> <p>16 A. Yes.</p> <p>17 Q. -- to get those forms of ID?</p> <p>18 A. Yes.</p> <p>19 Q. Was this amendment adopted by the Senate?</p> <p>20 A. No.</p> <p>21 Q. Had this been adopted, would this have reduced</p> <p>22 the burden on poor voters?</p> <p>23 A. It is possible, although, again, today, I think</p> <p>24 the charge for a birth certificate is three dollars or</p> <p>25 zero dollars depending on the county.</p>	<p style="text-align: right;">224</p> <p>1 Q. Would this amendment, in essence, have provided</p> <p>2 the same forms of ID that were part of SB 362?</p> <p>3 A. It looks to be very similar to 362. One photo</p> <p>4 or two nonphoto, which, again, was, at the time, opposed</p> <p>5 by every Democrat that I recall.</p> <p>6 Q. But in answer to my question, it was very</p> <p>7 similar to Senate Bill 362?</p> <p>8 A. It is similar.</p> <p>9 Q. In terms of the ID. And this amendment was not</p> <p>10 adopted by the Senate, correct?</p> <p>11 A. It was not.</p> <p>12 Q. Do you know why the Legislature didn't adopt</p> <p>13 this amendment?</p> <p>14 A. I can't recall the debate, so no, I don't know.</p> <p>15 Q. Turning your attention to Page 123, which is</p> <p>16 something you testified about earlier, the Floor</p> <p>17 Amendment Number 18 concerning concealed handgun</p> <p>18 licenses?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see that that amendment was adopted?</p> <p>21 A. Unanimously, yes.</p> <p>22 Q. Do you know why that was adopted?</p> <p>23 A. I can't recall, no. I don't know.</p> <p>24 Q. And do you know whether other amendments to</p> <p>25 allow the use of Medicare cards and student IDs were</p>

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<p style="text-align: right;">225</p> <p>1 also offered?</p> <p>2 A. Do I know why?</p> <p>3 Q. No. Do you know -- are you aware that there</p> <p>4 were other amendments to include Medicare cards and</p> <p>5 student ID cards that were offered on the Senate floor?</p> <p>6 A. Yes.</p> <p>7 Q. And were those amendments adopted by the</p> <p>8 Senate?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any facts or basis for</p> <p>11 including concealed handguns as an acceptable form of</p> <p>12 ID, but not Medicare cards or student ID cards?</p> <p>13 A. Well, from my own knowledge, I would -- I know</p> <p>14 that the concealed handgun licenses are issued by DPS,</p> <p>15 which also issues driver licenses and election ID cards</p> <p>16 and personal identification cards. I know they have</p> <p>17 personal -- identifying information and expiration dates</p> <p>18 on their face. Medicare cards, I'm honestly not sure</p> <p>19 what those look like. I'm not sure if they include</p> <p>20 expiration dates or other identifying information.</p> <p>21 Students IDs, I've talked about before. I</p> <p>22 think even if as in the proposed amendment in the</p> <p>23 Senate, you say accredited public university in Texas,</p> <p>24 that's still a very, very large pool of potential</p> <p>25 identifications, which may or may not have security</p>	<p style="text-align: right;">227</p> <p>1 used in other areas, looking at the text of Senator</p> <p>2 Ellis's amendment, it required an annual report, which</p> <p>3 would already be unusual in the legislatures, and we</p> <p>4 meet every other year, and a list of seven items that</p> <p>5 would have to be included in that annual report,</p> <p>6 including the number of residents eligible to vote, the</p> <p>7 average wait time to obtain certain types of documents.</p> <p>8 So yeah, I think, assuming the Secretary</p> <p>9 of State could even determine these numbers, they seem</p> <p>10 like a -- it would be pretty time consuming to get all</p> <p>11 seven of these items produced on an annual basis.</p> <p>12 Q. Was there any concern that the data gathered</p> <p>13 would show a discriminatory impact of Senate Bill 14 on</p> <p>14 minority voters?</p> <p>15 A. I'm not aware of any such concern.</p> <p>16 MS. WESTFALL: Could you please mark this?</p> <p>17 (Exhibit 175 marked for identification.)</p> <p>18 Q. (By Ms. Westfall) You've been handed what's</p> <p>19 been marked as Exhibit 175. Did you recognize this</p> <p>20 document?</p> <p>21 A. It looks like a press release by the Lieutenant</p> <p>22 Governor.</p> <p>23 Q. Did you see a draft of this before it was</p> <p>24 finalized?</p> <p>25 A. I don't recall if I did or not.</p>
<p style="text-align: right;">226</p> <p>1 elements or expiration dates or any other number of</p> <p>2 identifying characteristics.</p> <p>3 Q. Were there any forms of ID issued by DPS that</p> <p>4 were -- are not acceptable photo IDs under Senate Bill</p> <p>5 14?</p> <p>6 A. I'm not aware of any.</p> <p>7 Q. Would you turn your attention to 130. Do you</p> <p>8 see that Senator Ellis offered a Floor Amendment Number</p> <p>9 130?</p> <p>10 A. Yes.</p> <p>11 Q. Pertaining to the collection of data?</p> <p>12 A. Yes.</p> <p>13 Q. And requiring the Secretary of State to conduct</p> <p>14 studies related to eligible voters?</p> <p>15 A. Yes.</p> <p>16 Q. And this amendment was rejected, correct?</p> <p>17 A. Yes.</p> <p>18 Q. This was not included in the final version of</p> <p>19 Senate Bill 14 signed about the Governor; is that right?</p> <p>20 A. Correct.</p> <p>21 Q. Had Floor Amendment Number 30 been adopted,</p> <p>22 would it have interfered with the effectiveness of</p> <p>23 Senate Bill 14?</p> <p>24 A. Yes, to the extent it required a large devotion</p> <p>25 of resources by the Secretary of State that might be</p>	<p style="text-align: right;">228</p> <p>1 Q. Did you write this?</p> <p>2 A. No.</p> <p>3 Q. Did you advise Mike Walz, who is listed as a</p> <p>4 contact here, about the contents of this release?</p> <p>5 A. It is possible, but I do not recall seeing this</p> <p>6 or advising on this.</p> <p>7 Q. Do you see that in the second paragraph, it</p> <p>8 states, "A voter ID will ensure that only U.S. citizens</p> <p>9 who are legally eligible vote in Texas elections"?</p> <p>10 A. Yes.</p> <p>11 Q. Why does this press release reference a need to</p> <p>12 ensure only U.S. citizens are participating in</p> <p>13 elections?</p> <p>14 A. Why does it reference that? I don't know. I</p> <p>15 mean, the bill does ensure that.</p> <p>16 Q. Doesn't it seem that this message about SB 14</p> <p>17 seems a bit in conflict with what you had been</p> <p>18 recommending senators to say about the bill?</p> <p>19 A. Well, Lieutenant Governor is not a senator or</p> <p>20 the sponsor. I don't think it conflicts with that</p> <p>21 necessarily. I think my e-mail that you referenced</p> <p>22 earlier was warning about using certain types of terms.</p> <p>23 They're talking about certain subjects that were not a</p> <p>24 matter covered by the bill.</p> <p>25 Q. So you see no conflict between the message</p>

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<p style="text-align: right;">229</p> <p>1 about Voter ID in Exhibit 175 and the purposes of the 2 bill as you saw them?</p> <p>3 A. I think it's a more narrow interpretation of 4 the bill than -- it doesn't include everything the bill 5 covers, so it's more narrow than I might personally 6 characterize it.</p> <p>7 Q. Why was there a need for ensuring that only 8 U.S. citizens vote in Texas elections?</p> <p>9 A. I don't know. I don't know why.</p> <p>10 Q. Was there any factual basis for non-U.S. 11 citizens participating in elections at the time and they 12 need to be stamped out by the Legislature?</p> <p>13 A. Again, I think non-U.S. citizens or non-Texas 14 citizens are a subset of a larger class of ineligible 15 voters who would hopefully be deterred from trying to 16 cast fraudulent votes.</p> <p>17 Q. This press release references in particular 18 U.S. citizens and ensuring that only U.S. citizens are 19 participating in elections in Texas, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Were there any facts, that you're aware of at 22 the time, that non-U.S. citizens were participating in 23 Texas elections?</p> <p>24 A. I can't recall specific examples.</p> <p>25 Q. And was there a lack of public confidence in</p>	<p style="text-align: right;">231</p> <p>1 Q. (By Ms. Westfall) Do you recognize this 2 document?</p> <p>3 A. Yes.</p> <p>4 Q. What is it?</p> <p>5 A. It looks like an e-mail from myself to Senate 6 staffers, some Senate staffers, with an attached summary 7 of SB 14 as it passed the Senate.</p> <p>8 MS. WESTFALL: For the record, Exhibit 176 9 is Texas 00034469 through Texas TX 00034471.</p> <p>10 Q. (By Ms. Westfall) Did you draft the attachment 11 to Exhibit 176?</p> <p>12 A. I think I probably did.</p> <p>13 Q. And the attachment is titled Voter ID Bill 14 Summary, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Who was the intended audience of this bill 17 summary?</p> <p>18 A. I assume the people on the e-mail that I sent 19 it to.</p> <p>20 Q. Was it solely for purposes of advising these 21 staff people, or was it intended for a broader audience?</p> <p>22 A. It's possible it was intended for people on the 23 Lieutenant Governor's staff, as well as the recipients 24 of this e-mail.</p> <p>25 Q. Did you circulate this summary to anybody else</p>
<p style="text-align: right;">230</p> <p>1 the election process as a result of noncitizens 2 participating in the elections?</p> <p>3 A. Again, I think it was my impression -- it is my 4 impression that voters in Texas, citizens in Texas saw 5 room for improvement, specifically in the form of photo 6 ID, as evidenced by public opinion polls, among all 7 voters, minority voters, and subsets of minority voters.</p> <p>8 MS. WESTFALL: I would like to designate 9 this now as highly confidential. 10 (Exhibit 176 marked for identification.)</p> <p>11 Q. (By Ms. Westfall) You've been handed what's 12 been marked as 176. Do you recognize this document?</p> <p>13 MS. HALPERN: And just before he answers 14 that, and again, I wasn't involved in that process. But 15 to the extent that this document has been marked as 16 highly confidential, I think it's incumbent on me to 17 enter a running objection to questions about this 18 document to the extent that whatever privileges were 19 asserted by the person who wrote this document are 20 obliterated by your asking questions about it.</p> <p>21 MS. WESTFALL: I take strong objection to 22 the word "obliterated," Counsel. But your objection is 23 on the record. And this is designated as highly 24 confidential pursuant to the consent protective order 25 ECF 105.</p>	<p style="text-align: right;">232</p> <p>1 besides the recipients on the first page of Exhibit 176?</p> <p>2 A. I don't recall whether I did or not.</p> <p>3 Q. Was this summary reviewed and approved by 4 anyone in your office before it went out?</p> <p>5 A. Probably not, but I can't be sure.</p> <p>6 Q. Did Lieutenant Governor Dewhurst see this 7 summary?</p> <p>8 A. I can't recall. It's possible.</p> <p>9 Q. Do you see it was dated January 27th, 2011?</p> <p>10 A. The e-mail is dated January 27th, 2011, yes.</p> <p>11 Q. Was this e-mail drafted after the Senate had 12 adopted Senate Bill 14?</p> <p>13 A. It appears that yes, it was.</p> <p>14 Q. Do you see that under the Bill Summary, the 15 first sentence characterizes SB 14 as the strictest 16 photo ID bill in the country?</p> <p>17 A. Yes, arguably the strictest photo ID bill.</p> <p>18 Q. What was your assessment based on?</p> <p>19 A. The comparison of Texas requirements to states 20 that had other photo ID requirements.</p> <p>21 Q. What made it -- what particular facets of the 22 bill made it the strictest in the country?</p> <p>23 A. I assume it was related to the forms of 24 acceptable ID. It could also have been related to 25 criminal penalties associated with fraudulent election</p>

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<p style="text-align: right;">233</p> <p>1 activity.</p> <p>2 Q. Anything else?</p> <p>3 A. Without looking at it in my comparison, I'm not</p> <p>4 sure offhand.</p> <p>5 Q. Do you believe it was the intent of the Texas</p> <p>6 Legislature to enact the strictest photo ID law in the</p> <p>7 country?</p> <p>8 A. I believe it was the intent of the Legislature</p> <p>9 to enact a photo ID law that was successful in securing</p> <p>10 the integrity of elections. But I'm not sure they -- I</p> <p>11 don't think they did it to get ahead of what other</p> <p>12 states were doing or not doing.</p> <p>13 Q. Do you see that in the first paragraph, you</p> <p>14 predict that it will be upheld under Section 5, Voting</p> <p>15 Rights Act Review?</p> <p>16 A. I do see that.</p> <p>17 Q. Why did you in this summary, right after the</p> <p>18 bill was passed by the Senate, opine that it will be</p> <p>19 preclearance, having only days before expressed grave</p> <p>20 doubts about its state under Section 5?</p> <p>21 A. Well, I think there's a different bill, and so</p> <p>22 given the addition of additional acceptable photo IDs</p> <p>23 and blanket exceptions for certain classes of voters and</p> <p>24 other provisions related to availability of</p> <p>25 identification -- election identification cards and</p>	<p style="text-align: right;">235</p> <p>1 voters.</p> <p>2 Q. In terms of what was passed in the Senate, did</p> <p>3 the provision excluding voters over 70, was that</p> <p>4 included in the bill signed into law?</p> <p>5 A. I do not believe it was.</p> <p>6 Q. Was the exemption for SB 14, by presenting a</p> <p>7 certificate related to disability, passed into law?</p> <p>8 A. I believe it was.</p> <p>9 Q. Are you -- are you -- do you believe that it</p> <p>10 was -- the voter had to obtain documentation from the</p> <p>11 Social Security Administration or Veterans</p> <p>12 Administration in the version that was enacted?</p> <p>13 A. For the disability exception? I cannot</p> <p>14 remember the specific documentation required. I'd have</p> <p>15 to look it up. I can if you'd like.</p> <p>16 Q. Was the Senate -- do you recall, was the Senate</p> <p>17 version -- did the Senate version have a provision where</p> <p>18 a person with a disability could obtain a certificate or</p> <p>19 documentation from a physician to be exempt?</p> <p>20 A. I can't recall that except by looking at this</p> <p>21 summary, that I presumably prepared. It says that a</p> <p>22 voter who is disabled and has provided a physician</p> <p>23 certification of that disability to the registrar may</p> <p>24 get a certain type of registration card.</p> <p>25 Q. And was that provision part of the bill that</p>
<p style="text-align: right;">234</p> <p>1 education.</p> <p>2 Q. Were election identification cards included</p> <p>3 when the Senate passed the bill, or was that in</p> <p>4 conference committee?</p> <p>5 A. A good question. Let me check. It may have</p> <p>6 been in conference. I can't remember for sure offhand</p> <p>7 without having a copy of the Senate and engrossed</p> <p>8 version.</p> <p>9 Q. So the basis of your opinion about the bill</p> <p>10 being likely precleared is based on the exemptions for</p> <p>11 disability and what other provision?</p> <p>12 A. Again, the changes made in the Senate after</p> <p>13 filing included additional forms of acceptable photo ID,</p> <p>14 exceptions for certain classes of people, including</p> <p>15 voters over 70, disabled voters, indigent or religious</p> <p>16 objectors; the fact that the name and ID must be</p> <p>17 substantially similar to the name on the list as opposed</p> <p>18 to exactly matching. I can't remember what else.</p> <p>19 Q. And were those provisions -- did those</p> <p>20 provisions ensure that there would not be disparate</p> <p>21 impact on minority voters, or was that simply a</p> <p>22 lessening of the burden on all voters?</p> <p>23 A. I think both. Minority voters are included in</p> <p>24 all voters, so in lessening the burden on all voters</p> <p>25 would almost certainly reduce the burden on minority</p>	<p style="text-align: right;">236</p> <p>1 was signed into law?</p> <p>2 A. I can't remember the exact language in the</p> <p>3 final bill.</p> <p>4 Q. Was something more restrictive related to just</p> <p>5 the Social Security Administration and the Veterans</p> <p>6 Administration signed into law?</p> <p>7 MS. HALPERN: Object to the form.</p> <p>8 A. I mean, it's possible. I can look at the bill.</p> <p>9 Q. (By Ms. Westfall) Please.</p> <p>10 A. Yes. There is different language. And my</p> <p>11 guess is, it was made to conform with some standardized</p> <p>12 language regarding a definition of disability.</p> <p>13 Q. It had the effect of being more -- providing a</p> <p>14 narrower class of persons with disabilities relief from</p> <p>15 the bill, did it not?</p> <p>16 A. I can't recall now what the affect was, but I</p> <p>17 do recall, now that I have the language in front of me,</p> <p>18 that it was designed to make it parallel to existing</p> <p>19 definitions of disability elsewhere in Texas law.</p> <p>20 Q. Fair to say it's easier to get a note from a</p> <p>21 doctor than it is to get a document from the Social</p> <p>22 Security Administration or Veterans Administration?</p> <p>23 A. I honestly don't know. I mean, the language</p> <p>24 here is a physician certification of the disability.</p> <p>25 I'm not sure exactly what that entails, and I'm not sure</p>

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<p style="text-align: right;">237</p> <p>1 if these documents from the Social Security 2 Administration or Department of Veterans Affairs are 3 obtainable online or by mail or in the possession of 4 people receiving disability benefits anyway. 5 Q. Did you have any knowledge about that process 6 at the time that SB 14 was enacted by -- passed by the 7 Senate? 8 A. I'm not sure that I did. 9 Q. In the summary, you also reference persons who 10 are indigent -- 11 A. Yes. 12 Q. -- being exempt from the bill in certain 13 regards of being able to get a photo ID or not being 14 able to get a photo ID. That provision was not included 15 in the bill signed into law, correct? 16 A. Correct. And I think the answer is because 17 voting, election identification certificates free of 18 charge were added, which removed the need to exempt 19 indigent people up front. 20 Q. Fair to say that the bill that was signed into 21 law was stricter than the version that the Senate 22 passed? 23 A. I'm not sure strict is the right word. I mean, 24 there were -- there is different language. They added 25 some things and removed some things. But without a</p>	<p style="text-align: right;">239</p> <p>1 Q. Do you know why it was taken out? 2 A. I don't. 3 Q. Were you involved in drafting the EIC provision 4 that was adopted during the conference? 5 A. I believe I was. 6 Q. How did you develop will that language? 7 A. I believe my intent was to have it parallel 8 existing statutory or rule language for drivers' 9 licenses, after removing parts that were not relevant. 10 The goal was to have the cards and the information be 11 similar to drivers' licenses and issued by the same 12 agency. 13 MS. WESTFALL: And I meant to suspend the 14 designation of highly confidential right before I 15 started asking about the conference committee. I don't 16 know if it's possible to insert it at this juncture. 17 Q. (By Ms. Westfall) Did you consider the hours of 18 operation for driver license offices when you were 19 developing the EIC provision? 20 A. I mean, generally, the hours of operation of 21 DPS offices were debated on the floor of the Senate, so 22 I think, yes, I would have considered it. 23 Q. Was there any response legislatively to those 24 concerns raised? 25 A. Not within the face of this statute, but I'm</p>
<p style="text-align: right;">238</p> <p>1 side-by-side comparison, I wouldn't say strict. And 2 even if I saw them side by side, I'm not sure strict is 3 the right word. 4 Q. Did the Lieutenant Governor play any role in 5 the conference committee's consideration of Senate Bill 6 14? 7 A. I don't know. 8 Q. Did he appoint the conferee? 9 A. He did do that. 10 Q. Was it just the Senate conferees, or did he 11 also -- was he also involved in the House conferee side 12 of things? 13 A. The Lieutenant Governor appoints Senate 14 conferees to conference committees, so I'm not aware of 15 any other involvement in appointees. 16 Q. Does he appoint conferees for all bills in the 17 Senate or only certain bills? 18 A. Any bill that goes to conference committee has 19 conferees appointed by the Lieutenant Governor. 20 Q. During the conference committee's consideration 21 of SB 14, did the conference committee remove the 22 provision to require that voter education be targeted at 23 low income and minority voters? Are you aware of that? 24 A. I can't remember when that language was added 25 or taken out.</p>	<p style="text-align: right;">240</p> <p>1 not sure what other legislative actions were taken. And 2 again, I know as a fact that actions were taken by the 3 Department of Public Safety. 4 Q. Was it left to DPS, when the bill was being 5 crafted, as to what the hours of the driver license 6 offices would be? 7 A. Yes. DPS sets the hours of their office based 8 on the whole range of factors, including population and 9 usage and so forth. 10 Q. And Senate Bill 14 did not direct or influence 11 in any way where driver licenses offices were located; 12 is that correct? 13 A. I'd have to check to be sure. 14 (Reviewing document.) I don't see any 15 language doing that. 16 Q. Did the Legislature, in crafting SB 14, give 17 any consideration to the availability of driver license 18 offices via public transit? 19 A. Again, my recollection is that it was -- that 20 may have been part of the debate on the floor, but I 21 can't remember any specific language in the face of the 22 statute addressing that. 23 Q. During consideration of SB 14, was there any 24 analysis of cost or steps a voter would need to take to 25 obtain an EIC?</p>

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<p style="text-align: right;">241</p> <p>1 A. I can't recall.</p> <p>2 Q. Is it fair to say that Hispanic and African</p> <p>3 American senators asserted during the legislative</p> <p>4 process that Senate Bill 14 would diminish the</p> <p>5 participation of Hispanic and African American voters?</p> <p>6 A. I recall that was, yes.</p> <p>7 Q. Do you agree with that assessment?</p> <p>8 A. No, not necessarily.</p> <p>9 Q. I should say, did you at the time agree with</p> <p>10 that assessment?</p> <p>11 A. No.</p> <p>12 Q. What was your basis, factual basis at the time</p> <p>13 to have skepticism about those assertions?</p> <p>14 A. I would say the entirety of testimony over the</p> <p>15 course of multiple sessions; the fact that not just in</p> <p>16 Texas, but in no other state, that I was aware of, had</p> <p>17 even a single minority or other plaintiff come forward</p> <p>18 that was unable to obtain an ID or they already</p> <p>19 possessed an ID, and that was true for minority</p> <p>20 populations, poor populations, and all populations.</p> <p>21 So I would guess -- I would say in part,</p> <p>22 based on the experience of other states and the lack of</p> <p>23 people -- even a single person identified as unable to</p> <p>24 obtain identification. And again, the fact that during</p> <p>25 the multiple sessions of testimony, I was not convinced</p>	<p style="text-align: right;">243</p> <p>1 discriminatory purpose, in whole or in part?</p> <p>2 A. I do not believe that it was passed with any</p> <p>3 discriminatory purpose, in whole or in part.</p> <p>4 Q. Was Senate Bill 14 enacted in part to reduce</p> <p>5 the participation of Hispanic voters?</p> <p>6 A. I do not believe so.</p> <p>7 Q. Was SB 14 enacted in part to reduce the</p> <p>8 participation of African American voters?</p> <p>9 A. I do not believe so. And, in fact, at least on</p> <p>10 the House side, there were minority members, black and</p> <p>11 Hispanic, who voted for the bill.</p> <p>12 Q. At any time since the passage of Senate Bill</p> <p>13 14, have you come to believe that Senate Bill 14 will</p> <p>14 have a disproportionate effect on minority voters as</p> <p>15 compared to Anglo voters?</p> <p>16 A. I have not seen any evidence to convince me of</p> <p>17 that.</p> <p>18 Q. Are you familiar with the opinion of Texas</p> <p>19 versus Holder denying judicial preclearance of Senate</p> <p>20 Bill 14?</p> <p>21 A. I am generally familiar.</p> <p>22 Q. Did you read the opinion?</p> <p>23 A. It's been a while.</p> <p>24 Q. But yeah?</p> <p>25 A. Yes, I have read it.</p>
<p style="text-align: right;">242</p> <p>1 that this would adversely impact any one class of people</p> <p>2 in Texas.</p> <p>3 Q. Do you think that it would be problematic if SB</p> <p>4 14 made it more difficult for Hispanic and African</p> <p>5 American voters to participate in elections, even if it</p> <p>6 didn't wholly disenfranchise them?</p> <p>7 MS. HALPERN: Objection, calls for a legal</p> <p>8 conclusion.</p> <p>9 Q. (By Ms. Westfall) You may answer.</p> <p>10 A. Would it be problematic if SB 14 adversely</p> <p>11 impacted minority populations?</p> <p>12 Q. Made it more burdensome.</p> <p>13 A. Made it more burdensome. It would depend on</p> <p>14 the extent of that burden. It would be dependant on</p> <p>15 whether it was only minorities that were burdened. It</p> <p>16 would depend on whether there was an intent to burden</p> <p>17 only those minorities. So possibly, just to answer, I</p> <p>18 guess.</p> <p>19 Q. At any time since the passage of Senate Bill</p> <p>20 14, have you come to believe that Senate Bill 14 was</p> <p>21 passed with any discriminatory purpose?</p> <p>22 A. Before I say yes or no, how was it phrased</p> <p>23 again? Do I believe that it was passed --</p> <p>24 Q. At any time since the passage of Senate Bill</p> <p>25 14, have you come to believe that it was passed with any</p>	<p style="text-align: right;">244</p> <p>1 Q. Did the Lieutenant Governor have a reaction to</p> <p>2 the decision?</p> <p>3 A. My memory is that he was disappointed.</p> <p>4 Q. How did the Senate on the whole react?</p> <p>5 MS. HALPERN: Objection, calls for</p> <p>6 speculation.</p> <p>7 Q. (By Ms. Westfall) You may answer.</p> <p>8 A. Public reactions from individual to senators</p> <p>9 varied.</p> <p>10 Q. How did -- go ahead.</p> <p>11 A. Some were disappointed and some were pleased, I</p> <p>12 imagine.</p> <p>13 Q. Did the Lieutenant Governor take any actions to</p> <p>14 respond to the decision?</p> <p>15 A. I can't remember any specific action.</p> <p>16 Q. Did he propose any changes to Senate Bill 14?</p> <p>17 A. I can't recall.</p> <p>18 Q. Did he or any senator urge that amendments to</p> <p>19 Senate Bill 14 be made to address any of the concerns</p> <p>20 raised by the court?</p> <p>21 A. I can't recall specific suggestions.</p> <p>22 Q. How many times did the Legislature meet after</p> <p>23 -- strike that.</p> <p>24 When did the decision -- when was it</p> <p>25 issued?</p>

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<p style="text-align: right;">245</p> <p>1 A. I can't recall a date.</p> <p>2 Q. Is it -- was it issued around August 2012?</p> <p>3 A. That sounds right.</p> <p>4 Q. How many times did the Legislature meet after</p> <p>5 August 2012?</p> <p>6 A. They would have met in regular session in the</p> <p>7 spring of -- winter and spring of 2013, and one or two</p> <p>8 special sessions after that.</p> <p>9 Q. Are you aware of any committee hearings held</p> <p>10 related to Voter ID after Texas versus Holder was</p> <p>11 issued?</p> <p>12 A. It's possible that the issue was addressed</p> <p>13 during the regular legislative session, but I also know</p> <p>14 that courts -- the U.S. Supreme Court's decision</p> <p>15 regarding Section 5 of the Voting Rights Act impacted</p> <p>16 concern over preclearance.</p> <p>17 Q. Do you know when that decision was issued?</p> <p>18 A. It was the summer. I forget the date.</p> <p>19 Q. Was it issued June 25th, 2013?</p> <p>20 A. That sounds -- that sounds right.</p> <p>21 Q. And so for the period from the time that Texas</p> <p>22 versus Holder was issued in August 2012 to June 25th,</p> <p>23 2013, were there any committee hearings held related to</p> <p>24 Voter ID in the Texas Legislature?</p> <p>25 A. I'm not sure on the House side, and I can't</p>	<p style="text-align: right;">247</p> <p>1 Q. Between August -- August 2012 and June 2013?</p> <p>2 A. Well, they wouldn't have been called right</p> <p>3 before the regular session because there wasn't time.</p> <p>4 And then during the regular session, as I said, I don't</p> <p>5 recall what specific action or consideration committees</p> <p>6 gave to it. And then session ended late May, early</p> <p>7 June, and the Shelby County decision came out late June.</p> <p>8 So I think no, there was not consideration given through</p> <p>9 the legislative process.</p> <p>10 Q. And after the decision in Texas versus Holder,</p> <p>11 Texas held a major election, did it not?</p> <p>12 A. I think that's right.</p> <p>13 Q. A presidential federal election in November</p> <p>14 2012; is that right?</p> <p>15 A. Right.</p> <p>16 Q. Were there any efforts made on the part of the</p> <p>17 Legislature to hold hearings, convene task force or</p> <p>18 otherwise examine the administration of the 2012</p> <p>19 election?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Would you be aware of those had they been?</p> <p>22 A. I might be aware of them, but be unable to</p> <p>23 remember them now. But I don't remember any specific</p> <p>24 efforts by the Legislature to examine the effects.</p> <p>25 I know there were various news accounts by</p>
<p style="text-align: right;">246</p> <p>1 recall on the Senate side. But again, I think there was</p> <p>2 -- I, as an observer, expected a decision soon regarding</p> <p>3 the constitutionality of Section 5 of the Voting Rights</p> <p>4 Act, given the animosity that arose out of Senate Bill</p> <p>5 14 and the earlier versions of that; the extreme</p> <p>6 partisan split on the issue that I don't think anybody</p> <p>7 was in a hurry to get right back into it when there were</p> <p>8 pending U.S. Supreme Court cases on the issue.</p> <p>9 Q. Were any pending -- the Shelby County case,</p> <p>10 that's the case you're referring to?</p> <p>11 A. Correct.</p> <p>12 Q. And that did not -- that was not an appeal of</p> <p>13 the Texas Voter ID decision, correct?</p> <p>14 A. Correct.</p> <p>15 Q. That was about the constitutionality of the</p> <p>16 formula of coverage under Section IV of the Voting</p> <p>17 Rights Act?</p> <p>18 A. Correct.</p> <p>19 Q. As well as Section 5 of the Voting Rights Act,</p> <p>20 correct?</p> <p>21 A. By reference, yes.</p> <p>22 Q. Were any interim session committees convened</p> <p>23 during this period to address the issue of Voter ID that</p> <p>24 you're aware of?</p> <p>25 A. Between the period -- the end of session and --</p>	<p style="text-align: right;">248</p> <p>1 the media. There were comments from county election</p> <p>2 official in those media reports. I know the Secretary</p> <p>3 of State's Office was reviewing the implementation of</p> <p>4 the program.</p> <p>5 Q. I just want to make sure we're testifying --</p> <p>6 you're testifying about the election I'm referring to.</p> <p>7 The election during November 2012, SB 14</p> <p>8 was not in effect, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Was there any examination of how that election</p> <p>11 went by the Legislature?</p> <p>12 A. I'm not clear.</p> <p>13 Q. You don't know?</p> <p>14 A. I don't know.</p> <p>15 Q. And you would be the person who would likely</p> <p>16 know for the Lieutenant Governor, would you not, because</p> <p>17 you handle election issues?</p> <p>18 A. Actually, in November 2012, I had just returned</p> <p>19 to the Lieutenant Governor's Office, and I was not</p> <p>20 handling elections of the broad issue when I returned.</p> <p>21 Q. Who was?</p> <p>22 A. Constance Allison.</p> <p>23 Q. Are you aware of any in person voter</p> <p>24 impersonation that occurred in the state of Texas during</p> <p>25 the 2012 presidential election?</p>

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<p style="text-align: right;">249</p> <p>1 A. I am not personally aware of any.</p> <p>2 Q. Who would be the best person in the state of</p> <p>3 Texas to answer that question?</p> <p>4 A. Individual county law enforcement officials.</p> <p>5 Q. Who would be the best person at the state level</p> <p>6 to answer that question?</p> <p>7 A. I suppose the Secretary of State, possibly the</p> <p>8 Attorney General. But those would only come to the</p> <p>9 Attorney General if they forwarded by local law</p> <p>10 enforcement.</p> <p>11 Q. Are you aware of any in person voter</p> <p>12 impersonation that occurred in Texas during any election</p> <p>13 between August 2012 and June 2013?</p> <p>14 A. I cannot recall being aware of any.</p> <p>15 Q. As of June 26th, 2013, Texas started to enforce</p> <p>16 Senate Bill 14, correct?</p> <p>17 A. On what date? I'm sorry.</p> <p>18 Q. June 26th, 2013, it started to enforce the law?</p> <p>19 A. I think that's correct.</p> <p>20 Q. After Shelby was issued; is that right?</p> <p>21 A. That's correct.</p> <p>22 Q. Have you or anyone in the Lieutenant Governor's</p> <p>23 Office played any role the implementation of Senate Bill</p> <p>24 14 since June 26th, 2013?</p> <p>25 A. I don't think I can say we played a role in the</p>	<p style="text-align: right;">251</p> <p>1 believe, other election officials saying there has not</p> <p>2 be noticeable problems, and I can't remember if senators</p> <p>3 may have been quoted in any of those individuals'</p> <p>4 accounts.</p> <p>5 Q. Has the Lieutenant Governor or the Legislature</p> <p>6 made any efforts to determine the number of voters who</p> <p>7 have appeared to vote in person without a qualifying</p> <p>8 photo ID?</p> <p>9 A. I'm not sure there has been a legislative</p> <p>10 effort to do that.</p> <p>11 Q. So the answer is no?</p> <p>12 A. As far as I'm aware, the answer is no.</p> <p>13 Q. Has the Lieutenant Governor or the Legislature</p> <p>14 made any effort to determine the number of provisional</p> <p>15 ballots cast for lack of qualifying photo ID that were</p> <p>16 not counted?</p> <p>17 A. I am not sure.</p> <p>18 MS. WESTFALL: I want to take a slight</p> <p>19 break, and then we're nearing the end for me.</p> <p>20 (Recess taken from 4:45 p.m. to 4:57 p.m.)</p> <p>21 (Exhibit 177 marked for identification.)</p> <p>22 Q. (By Ms. Westfall) I'm going to hand you what's</p> <p>23 been marked as 177, and this is highly confidential</p> <p>24 another highly confidential document.</p> <p>25 MS. HALPERN: We're going back to that</p>
<p style="text-align: right;">250</p> <p>1 implementation.</p> <p>2 Q. Have you had communications with DPS other than</p> <p>3 the communications you testified about earlier this</p> <p>4 morning?</p> <p>5 A. I don't believe I have.</p> <p>6 Q. Has the Lieutenant Governor attempted to assess</p> <p>7 the impact of Senate Bill 14 on minority voters since</p> <p>8 Texas began enforcing Senate Bill 14?</p> <p>9 MS. HALPERN: I want to remind the witness</p> <p>10 that he is the general counsel for the Lieutenant</p> <p>11 Governor, and in that capacity, not to reveal any</p> <p>12 attorney-client confidences.</p> <p>13 A. I am not sure what efforts he has and has not</p> <p>14 undertaken.</p> <p>15 Q. (By Ms. Westfall) Has the Lieutenant Governor</p> <p>16 requested that the Secretary of State Office assess the</p> <p>17 impact of Senate Bill 14 on minority voters?</p> <p>18 A. I'm not aware that he has.</p> <p>19 Q. Has any legislator who supported Senate Bill</p> <p>20 14, to your knowledge, made any effort to assess the</p> <p>21 impact of Senate Bill 14 on minority voters?</p> <p>22 A. It's possible. Again, on my behalf, I have</p> <p>23 reviewed news accounts following each of the recent</p> <p>24 elections, statements from Travis County officials,</p> <p>25 election officials and other -- Harris County, I</p>	<p style="text-align: right;">252</p> <p>1 mode. 177.</p> <p>2 Q. (By Ms. Westfall) Do you recognize this</p> <p>3 document? Take your time to look at it.</p> <p>4 MS. WESTFALL: It is, for the record,</p> <p>5 LEG00004939 through 4941.</p> <p>6 A. It looks like e-mails between myself and</p> <p>7 representatives from a group called True the Vote.</p> <p>8 Q. (By Ms. Westfall) When did these exchanges</p> <p>9 occur?</p> <p>10 A. The first e-mail is August 30, and the last one</p> <p>11 is September 16, 2013.</p> <p>12 Q. Were the representatives from True the Vote</p> <p>13 asking for your assistance?</p> <p>14 A. Yes.</p> <p>15 Q. What were they seeking from you?</p> <p>16 A. They were wanting updates on efforts to</p> <p>17 implement voter -- voter -- getting identification to</p> <p>18 voters and related matters, voter registration election</p> <p>19 integrity issues.</p> <p>20 Q. Did this relate to EICs?</p> <p>21 A. I'm not sure that it related specifically to</p> <p>22 EICs. I think it was more identification in general,</p> <p>23 but certainly, EIC would have been included in that. I</p> <p>24 can review to be sure.</p> <p>25 Q. Sure. Why don't you take a moment to look and</p>

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<p style="text-align: right;">253</p> <p>1 refresh?</p> <p>2 A. Yes. This e-mail on August 30 refers to EIC</p> <p>3 application services, but I met with them in person, and</p> <p>4 it was a broader discussion.</p> <p>5 Q. What did they ask that you do with regard to</p> <p>6 DPS?</p> <p>7 A. I think they just wanted me to find out what</p> <p>8 DPS was doing.</p> <p>9 Q. Did you do that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you do that via e-mail or in -- in phone</p> <p>12 call or an in-person meeting or all of the above?</p> <p>13 A. I think it was probably definitely a phone</p> <p>14 call, and there may have been an e-mail to DPS as well.</p> <p>15 Q. What did you -- who did you contact at DPS?</p> <p>16 A. Candace Nolte, N-O-L-T-E. She's the government</p> <p>17 relations person at DPS.</p> <p>18 Q. What did you ask of Ms. Nolte?</p> <p>19 A. My memory is -- if I can read my e-mail here to</p> <p>20 be sure. I inquired generally about access to election</p> <p>21 identification.</p> <p>22 Q. What did she tell you in response to those</p> <p>23 inquiries?</p> <p>24 A. Well, this e-mail says that she indicated that</p> <p>25 they don't have the resources now to add mobile office</p>	<p style="text-align: right;">255</p> <p>1 the Vote?</p> <p>2 A. Yes, I believe there was a follow-up phone call</p> <p>3 that I made to True the Vote.</p> <p>4 Q. Do you see that in your e-mail you report that</p> <p>5 DPS does not have the resources right now but they hope</p> <p>6 to add additional resources next year for mobile</p> <p>7 locations?</p> <p>8 A. Right.</p> <p>9 Q. Did you follow up to learn whether DPS in 2014</p> <p>10 did have the resources to add mobile office locations or</p> <p>11 new office locations?</p> <p>12 A. I did not follow up. Again, I don't interact</p> <p>13 typically with DPS at the Capitol, and I wasn't handling</p> <p>14 general election issues last session.</p> <p>15 Q. Why did they contact -- why did True the Vote</p> <p>16 contact you?</p> <p>17 A. I think they just stopped by. It's possible.</p> <p>18 I think it was just a drop-in visit, and I was the one</p> <p>19 who was most familiar with their issue. But it's also</p> <p>20 possible that -- I mean, I've done voter ID issues, and</p> <p>21 they were referred to me. I can't remember the exact</p> <p>22 nature of how I met them.</p> <p>23 Q. Did you take any steps independent of these</p> <p>24 communications with DPS and True the Vote to follow up</p> <p>25 on the lack of resources that DPS claimed was</p>
<p style="text-align: right;">254</p> <p>1 locations or new office locations, but they hope to have</p> <p>2 the different resources in the new year. And there was</p> <p>3 also a reference -- a request to use DPS databases, let</p> <p>4 private parties use DPS databases, and DPS is, for</p> <p>5 obvious reasons, reluctant to allow access to their</p> <p>6 databases.</p> <p>7 Q. Did you have more than one conversation with</p> <p>8 DPS on this topic?</p> <p>9 A. I think there were probably more than one phone</p> <p>10 call.</p> <p>11 Q. Were they a handful of phone calls?</p> <p>12 A. Yes.</p> <p>13 Q. Was there any other information that you</p> <p>14 gleaned from your phone calls besides what is</p> <p>15 memorialized in this e-mail that you wrote on September</p> <p>16 16, 2013?</p> <p>17 A. It seems there may have been more detail in</p> <p>18 subsequent conversations about the extended hours</p> <p>19 offered by DPS. I can't remember other specifics.</p> <p>20 Q. Did you convey the contents of that</p> <p>21 conversation to anyone at True the Vote or other people?</p> <p>22 A. Yes, and then this e-mail is to True the Vote</p> <p>23 representatives.</p> <p>24 Q. I guess my question is whether the sum total of</p> <p>25 everything you learned from DPS, was it conveyed to True</p>	<p style="text-align: right;">256</p> <p>1 constraining DPS?</p> <p>2 A. I did not take efforts, but I'm not -- and I'm</p> <p>3 not sure what efforts through the budget or other areas</p> <p>4 may have been used to address the resource issue.</p> <p>5 Q. Do you know whether anybody besides you took</p> <p>6 any steps to provide DPS with additional resources?</p> <p>7 A. No, I was not involved in DPS budget process.</p> <p>8 Q. Are you aware of whether DPS in 2014 increased</p> <p>9 the number of mobile locations?</p> <p>10 A. I'm not aware.</p> <p>11 Q. Did they add any new driver license offices in</p> <p>12 2014?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Do you see that in Erin Anderson's response of</p> <p>15 9-16-2013, she alludes to -- she thanks you for your</p> <p>16 efforts but then eludes to the fact that she had a made</p> <p>17 an earlier flip response?</p> <p>18 A. I see that reference.</p> <p>19 Q. Do you know what that flip response is all</p> <p>20 about?</p> <p>21 A. I can't recall what that's referring to. I</p> <p>22 assume it was from something she said in our meeting,</p> <p>23 but I can't recall.</p> <p>24 MS. WESTFALL: I'm going to pass the</p> <p>25 witness.</p>

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<p style="text-align: right;">257</p> <p>1 MR. DUNBAR: Thank you, Ms. Westfall. 2 EXAMINATION 3 BY MR. DUNBAR: 4 Q. Good afternoon, Mr. Hebert. I'm Kelly Dunbar. 5 As I mentioned before, I represent the Texas League of 6 Young Voters' Education Fund and Imania Clark as an 7 individual. 8 THE REPORTER: I'm sorry, why don't you 9 move down here. 10 MR. DUNBAR: Sure. 11 (Changing seats.) 12 MS. HALPERN: Just for clarification, I am 13 representing this witness and I'm not otherwise part of 14 this lawsuit. Who is your client? 15 MR. DUNBAR: The Texas League of Young 16 Voters' Education Fund. 17 MS. HALPERN: What is that? 18 MR. DUNBAR: It's a public interest 19 organization in Texas. They're getting deposed tomorrow 20 by the State, so. 21 MS. HALPERN: You represent voters like 22 under 22 or something? 23 MR. DUNBAR: It's focused on registering 24 and issues relating to young voters in the state. 25 MS. HALPERN: Thanks. I appreciate that.</p>	<p style="text-align: right;">259</p> <p>1 Q. Sure. That's the March 4th, 2009 e-mail from 2 you to Janice McCoy. 3 A. Okay. 4 Q. And then you found 176? 5 A. I did. 6 Q. Okay. And Ms. Westfall asked you some 7 questions about these, so I guess I want to start with 8 exhibit -- Exhibit 176. And if you turn to -- 9 MR. WHITLEY: I'm sorry. That's one of 10 the ones I didn't get. Do you have an extra copy for 11 me? 12 MS. WESTFALL: Which one is that? 13 MR. WHITLEY: 155. 14 THE WITNESS: The summary of SB 14. 15 MR. DUNBAR: I'm on 176 right now, which I 16 do not have an extra copy of. 17 MR. WHITLEY: I've got 176. I don't have 18 155. 19 MR. DUNBAR: Oh, I'm sorry, 155. 20 MS. HALPERN: What is 155? 21 MR. DUNBAR: That's the Mr. Hebert e-mail 22 to Janice McCoy in March of 2009. 23 MS. HALPERN: Oh, yeah. Let me just see 24 if I can find that for you. 25 (Brief discussion off the record.)</p>
<p style="text-align: right;">258</p> <p>1 MR. DUNBAR: And one individual who is a 2 student. 3 MS. HALPERN: Okay. 4 Q. (By Mr. Dunbar) Mr. Hebert, good afternoon. I 5 think my introduction is on the record. Just to be 6 clear, I assume we will continue the deposition under 7 kind of the same ground rules and understanding that 8 Ms. Westfall provided you now early this morning. Is 9 that acceptable to you? 10 A. Yes. 11 Q. Great. And I think I'll just start. I had a 12 few questions about some of the highly confidential 13 e-mails, so would ask that this part be designated as 14 highly confidential and that I'm hopeful we can move off 15 that and not need to worry about that with respect to 16 the rest of my questions. 17 MR. WHITLEY: Mr. Dunbar, sorry to 18 interrupt. Just to be clear, even though you're asking 19 the questions now, the defendants will assert the same 20 objections as to the highly confidential portions that 21 we did while Ms. Westfall was asking the questions. 22 MR. DUNBAR: Understood. Thank you. 23 Q. (By Mr. Dunbar) And I'd ask that you gather 24 Exhibit 176 and Exhibit 155. 25 A. Can you tell me what 155 is?</p>	<p style="text-align: right;">260</p> <p>1 Q. (By Mr. Dunbar) Okay. And just to be clear, 2 so the record is clear on this point, this is an e-mail 3 and attachment from you on January 7, 2011, to a group 4 of Senate staffers; is that correct? 5 A. January 27. 6 Q. Yeah, you're correct. Thank you for the 7 clarification. 8 A. Uh-huh. 9 Q. And on the first page after the cover e-mail, I 10 believe you answered this question for Ms. Westfall 11 already. You explained that SB 14 would give Texas 12 arguably the strictest voter ID law in the country; is 13 that correct? 14 A. That's what this says, yes. 15 Q. And is it fair to describe this attachment as 16 advocating for the strictest photo ID law in the 17 country? 18 A. I don't think it's advocating for the strictest 19 photo ID law in the country. I think it's 20 characterizing it as arguably so, but then the next 21 sentence says, also, that I thought it was going to be 22 upheld under the constitution and Section 5 of the 23 Voting Rights Act. 24 Q. Right. So is it fair to say by January 27, 25 2011, it was the position of you or your office that</p>

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<p style="text-align: right;">261</p> <p>1 SB 14 should be adopted as it was -- as it was written?</p> <p>2 A. Yes. The Senate likes no changes from the</p> <p>3 House as a general rule.</p> <p>4 Q. But I'm asking about the position of you as a</p> <p>5 representative of the office of the Lieutenant Governor</p> <p>6 who were advocating enacting the bill as written; is</p> <p>7 that correct?</p> <p>8 A. I think that's fair.</p> <p>9 Q. And again, that would be the strictest photo ID</p> <p>10 law in the country, correct?</p> <p>11 A. The bill as passed by the Senate at the time</p> <p>12 was arguably the strictest photo ID law in the country,</p> <p>13 yes.</p> <p>14 Q. Okay. No, that's helpful. I then wanted to</p> <p>15 turn to Exhibit 155, which is, again, a document that</p> <p>16 we've talked about in the record. This is an e-mail</p> <p>17 from you on March 4, 2009 to Janice McCoy; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And on page 1 of this document, which I --</p> <p>21 again, we've already discussed, you have, "Reasons to</p> <p>22 Support SB 362 as Filed," is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And would you read into the record, if you</p> <p>25 haven't already, what the first bullet is in support</p>	<p style="text-align: right;">263</p> <p>1 supported it.</p> <p>2 MS. HALPERN: And let the record reflect</p> <p>3 that when he says in 2009, this was the bill before the</p> <p>4 Legislature, the witness is referring to Exhibit 155.</p> <p>5 And when he says in 2011, this was the bill before the</p> <p>6 Legislature, the witness is referring to Exhibit 176.</p> <p>7 A. And for both of those, when I say the</p> <p>8 Lieutenant Governor supported it, that's based on his</p> <p>9 public statements.</p> <p>10 Q. (By Mr. Dunbar) So would it be fair to say</p> <p>11 there was no change in the position of your office from</p> <p>12 2009 to 2011 with respect to how strict a photo ID law</p> <p>13 should be?</p> <p>14 A. I can't speak for the Lieutenant Governor</p> <p>15 personally, but I can say on my own behalf, there was</p> <p>16 support for a voter ID bill that improved the security</p> <p>17 of elections in Texas. And both bills did that to</p> <p>18 varying extents. And again, what was before the</p> <p>19 Legislature in 2009 was supported by my office.</p> <p>20 Q. So were there any facts that changed from 2009</p> <p>21 to 2011 that in your offices, your view or your office's</p> <p>22 view, justified a stricter photo ID measure than had</p> <p>23 been discussed in 2009?</p> <p>24 A. I'm not aware of facts that drove changes</p> <p>25 between the bills, but again, I was not -- the</p>
<p style="text-align: right;">262</p> <p>1 that you've written?</p> <p>2 A. The first bullet reads, "This bill improves</p> <p>3 security in the election process but is not as</p> <p>4 restrictive as Indiana and Georgia. There's less chance</p> <p>5 of disenfranchising elderly, poor or minority voters.</p> <p>6 Q. And I believe the record already reflects in</p> <p>7 answer to this question, apologies if I'm wrong, but you</p> <p>8 drafted these sets of bullets; is that correct?</p> <p>9 A. I think I did.</p> <p>10 Q. And so I guess my question is: What facts</p> <p>11 changed from May -- or excuse me, March 2009 to January</p> <p>12 2011 that led your office from advocating a least</p> <p>13 restrictive version of the law to what you then</p> <p>14 characterize as one of the most restrictive photo ID</p> <p>15 laws in the country?</p> <p>16 MS. HALPERN: Objection, compound.</p> <p>17 Q. (By Mr. Dunbar) You can answer.</p> <p>18 A. I think the question, as I understand it, the</p> <p>19 answer is these are different types of documents. One</p> <p>20 is talking points and essentially a sales pitch for</p> <p>21 members to use to get support for the bill. The other</p> <p>22 is a summary of what is in the bill. In 2009, this was</p> <p>23 the bill before the Legislature, and so I believe the</p> <p>24 Lieutenant Governor supported it. In 2011, this was the</p> <p>25 bill before the Legislature, and the Lieutenant Governor</p>	<p style="text-align: right;">264</p> <p>1 Lieutenant Governor was not a sponsor of either bill.</p> <p>2 Q. Right. And you've testified to that point</p> <p>3 before, and I guess I just want to be clear on that.</p> <p>4 That when you say he wasn't the sponsor, you mean in a</p> <p>5 formal parliamentary sense, the Lieutenant Governor was</p> <p>6 not the sponsor of the bill; is that correct?</p> <p>7 A. Correct. The Lieutenant Governor cannot file</p> <p>8 bills.</p> <p>9 Q. But did the Lieutenant Governor, I believe</p> <p>10 you've stated, based on public statements, strongly</p> <p>11 supported voter ID measures; is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And that you and your office played a role in</p> <p>14 drafting and implementing various iterations of the bill</p> <p>15 between 2009 and 2011, correct?</p> <p>16 A. I wouldn't use the word implemented, but yes,</p> <p>17 we were consulted in the process.</p> <p>18 Q. And you're not aware of any facts that change</p> <p>19 from 2009 to 2011 that would have justified a stricter</p> <p>20 form of a photo ID law? Is that your testimony?</p> <p>21 MS. HALPERN: Objection, compound, calls</p> <p>22 for -- misstates prior testimony.</p> <p>23 Q. (By Ms. Westfall) You can answer.</p> <p>24 A. I cannot recall specific factual evidence</p> <p>25 between 2009 and 2011 as evidenced through testimony or</p>

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<p style="text-align: right;">265</p> <p>1 other methods that I was aware of, but it is possible 2 there were additional examples of fraud that I'm 3 forgetting. It's possible that there was additional 4 input from experiences of other states. Beyond those 5 things, I'm not sure. 6 Q. But sitting here today, you can't recall any 7 specific instances of additional fraud or examples from 8 other states; is that correct? 9 A. I can't recall right now. 10 Q. And I'd ask that you take a look at Exhibit 11 166, which again is also highly confidential. And then 12 after we're done talking about this, we can probably 13 conclude the highly confidential portion. This is the 14 January 24, 2011 e-mail chain involving Jonathan 15 Stinson, Wroe Jackson. 16 A. Yes. 17 Q. And if you turn to page -- I guess to Texas 18 00265541, the second bullet down, do you see the 19 question: "Why is this bill different from the bill you 20 filed last session?" 21 A. Yes. 22 Q. And can you read -- can you read into the 23 record what your answer is? 24 A. The question is: "Why is this bill different 25 from the bill you filed last session?"</p>	<p style="text-align: right;">267</p> <p>1 Q. Okay. And there's a second part of that 2 sentence then says that there have been two additional 3 years to see that voter fraud is still a problem, 4 correct? 5 A. Correct. 6 Q. And but again, I believe that you've just 7 testified that you can't recall any specific examples of 8 voter fraud between 2009 and 2011 that would justify a 9 stricter voter ID law, correct? 10 A. I cannot recall specific examples. I know as 11 part of my duties, tracking election legislation, in 12 general, there were constant examples in the news that 13 almost every election of some sort of fraud or another. 14 Q. And in general, when you consider these 15 instances of fraud, did you draw distinctions between 16 the types of fraud that were at issue? 17 A. As a legal matter or as a professional matter? 18 Q. As a policy matter, was it relevant to you 19 whether the actual fraud that you perceived to be a 20 problem was in-person voter fraud, the type of fraud 21 that would be addressed by SB 14? 22 A. In assessing whether fraud, in general, was a 23 problem, I didn't make distinctions. In addressing 24 potential legislation in the future to address those 25 problems, I probably did.</p>
<p style="text-align: right;">266</p> <p>1 And the -- I think is a proposed response 2 is: "We have had two additional years to see photo ID 3 working in other states and two additional years to see 4 that voter fraud is still a problem. Only a true photo 5 ID bill can deter and detect fraud at the polls and can 6 protect the public's confidence in elections. Plus, I 7 believe that photo ID is simpler and less confusing for 8 the voters." 9 Q. And I believe your prior testimony is that you 10 did not write that response; is that correct? 11 A. That's correct. 12 Q. Would you agree with that response? 13 A. Seems like a fair response. 14 Q. And again, the response references two 15 additional years to see photo ID working in other 16 states. What did you understand that to mean at the 17 time when you saw these bullets? 18 A. I can't recall what I thought at the time. 19 Looking at it now, I -- it seems evident on its face 20 that states that had voter ID had not experienced 21 problems, and in fact, had seen increases in voter 22 turnout. 23 Q. So you would interpret working in that sentence 24 to mean an actual increase in voter turnout? 25 A. That could be one interpretation of working.</p>	<p style="text-align: right;">268</p> <p>1 Q. So as long as there was, quote/unquote, 2 evidence of voter fraud, you saw that as a rationale for 3 SB 14 across the board, correct? 4 A. I -- yeah, I do. 5 Q. Okay. I think that concludes the highly 6 confidential portion unless something else comes up. 7 SB 14 does include student IDs as an 8 acceptable form of ID; is that correct? 9 A. Correct. 10 Q. And prior to SB 14, I believe we've already 11 talked about student IDs would have been an acceptable 12 form of ID; is that correct? 13 A. In earlier sessions, in some drafts, student 14 IDs were included, yes. 15 Q. Sorry. And my question -- my question, I don't 16 think was clear. I meant prior to SB -- SB 14 going 17 into effect, setting aside prior versions of voter ID 18 legislation, a student voter in Texas could use a 19 student ID to vote; is that correct? 20 A. I'm actually not sure if that's correct. 21 Meaning, in 2009, if a student showed up and their only 22 identification was a student ID, could they vote? 23 Q. Right. 24 A. I'm not sure that's true. 25 Q. Let me take a look, then, I may be misreading</p>

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<p style="text-align: right;">269</p> <p>1 things, so you can help me out here. This would be 2 Exhibit 150, which is not highly confidential. 3 MR. WHITLEY: What is that? 4 MS. HALPERN: 362. 5 MR. DUNBAR: Yeah, this is 362, right, 6 which has the strike-through of what I took to be 7 existing law. So let me clarify that if I'm wrong. 8 A. Got it. 9 Q. (By Mr. Dunbar) Found it. If you look at page 10 6 of the document, or I guess, for the record, can you 11 tell me what Exhibit 150 is? 12 A. Exhibit 150 is a draft of Senate Bill 362 at 13 some point in the process. 14 Q. And you see throughout the draft underlining 15 and strike-throughs, correct? 16 A. Correct. 17 Q. And is it correct to say that underlining 18 represents the additional statutory text? 19 A. The underlined is the proposed new text, and 20 the struck-through is the existing law. 21 Q. Okay. Then on page 6 of the bill, under the 22 first heading at the top, you see strike-through? 23 A. Uh-huh. 24 Q. Beginning with form of identification 25 containing -- that states, "Form of identification</p>	<p style="text-align: right;">271</p> <p>1 A. I don't recall. I mean, again, there was an 2 ongoing discussion amongst senators about what forms of 3 identification are actually reliable, and in the context 4 of that conversation, I believe it was removed. 5 Q. You don't recall who first suggested that 6 students IDs not be an accepted form of voter 7 identification? 8 A. I don't recall. 9 Q. As you recall here today, it was not your 10 office that proposed the idea? 11 A. Correct. 12 Q. So it was likely proposed by someone in the 13 Legislature? 14 A. Yes. 15 Q. And did your office have an official position 16 on the question of whether student IDs should or should 17 not be included as an acceptable form of ID? 18 A. I know I was -- I don't think we had an 19 official position. I have and had concerns about 20 whether or not student IDs are secure forms of 21 identification given the problems I've discussed: The 22 lack of expiration dates, the varying degrees of 23 security, the different types of institutions and 24 locations of institutions and technological capability 25 of institutions and et cetera.</p>
<p style="text-align: right;">270</p> <p>1 containing the person's photograph that establishes the 2 person's identity," correct? 3 A. Correct. 4 Q. And to the extent that a student ID had a 5 photograph on it, would that have satisfied the existing 6 law there allowing someone to use a student ID to vote? 7 A. I suppose it could have. I'm not sure how 8 that's interpreted by election officials. 9 Q. Okay. So it's your testimony that in 10 considering SB 14 and whether to include student IDs or 11 not, you were not aware of whether student IDs could 12 actually historically have been used to vote? 13 A. I can't recall if I was aware of it at the 14 time, but, so I'm not sure. 15 Q. Okay. And I believe you -- you answered my 16 first question which may have been unclear, which is the 17 second question I wanted to ask. The prior versions of 18 draft or proposed photo ID legislation that were 19 considered in this relevant time frame did include 20 student IDs as an acceptable form of ID; is that 21 correct? 22 A. That's correct. 23 Q. And do you recall when the decision was made to 24 drop student IDs as a form of acceptable ID from the 25 bill, from the draft bill?</p>	<p style="text-align: right;">272</p> <p>1 Q. And did you discuss -- did you have discussions 2 with legislative staff about whether to include student 3 IDs? 4 A. It's possible. I can't recall specific 5 conversations. 6 Q. Would you have talked to Janice McCoy about the 7 issue? 8 A. Probably. 9 Q. Would you have talked to -- would there be 10 others that you likely would have talked to about the 11 subject? 12 A. I think possibly anyone in these e-mails we've 13 covered today. Senator -- staffers from Senator 14 Williams, Senator Duncan, Senator Huffman, senators who 15 were actively involved in supporting the legislation, as 16 well as, potentially, again, as I mentioned, I had 17 interacted with senators and their staffs daily from 18 both parties, so it's possible I talked to others about 19 it. 20 Q. And would there be one particular legislative 21 office that you would say was the strongest proponent of 22 not including student IDs as a form of acceptable ID? 23 A. I don't recall anyone being particularly 24 outspoken. 25 Q. So there was no one that was really that</p>

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<p style="text-align: right;">273</p> <p>1 supportive of the idea?</p> <p>2 A. Supportive of the idea of removing --</p> <p>3 Q. Right.</p> <p>4 A. -- student IDs? No one senator or person</p> <p>5 stands out to me.</p> <p>6 Q. Okay. And I think you've gotten -- you got</p> <p>7 into this slightly before in answering a different</p> <p>8 question, but what was the purpose of excluding student</p> <p>9 IDs or the purposes of excluding students IDs as a form</p> <p>10 of acceptable identification?</p> <p>11 A. I don't know --</p> <p>12 MS. HALPERN: Objection, asked and</p> <p>13 answered.</p> <p>14 Q. (By Mr. Dunbar) I hadn't asked the question</p> <p>15 before so you can answer.</p> <p>16 A. I don't know the author's intent, because I'm</p> <p>17 not the author. As I've said, my understanding is and</p> <p>18 my -- my position is that those forms of ID are</p> <p>19 inherently less secure and less reliable.</p> <p>20 Q. And at the time that SB 14 was being</p> <p>21 considered, were you aware of any facts or evidence that</p> <p>22 suggested student IDs had been used for voting fraud in</p> <p>23 Texas?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Were you aware of any evidence that student IDs</p>	<p style="text-align: right;">275</p> <p>1 A. Opponents of the bill were concerned that it</p> <p>2 would make it harder for students to vote and proponents</p> <p>3 disagreed.</p> <p>4 Q. And was there any analysis done by proponents</p> <p>5 on the question of whether those assertions were</p> <p>6 correct?</p> <p>7 A. I am not aware.</p> <p>8 Q. Was there any discussion about the effect of</p> <p>9 excluding student IDs on voting at historically Black</p> <p>10 colleges or universities in the state?</p> <p>11 A. Was there any analysis?</p> <p>12 Q. Correct.</p> <p>13 A. I'm not aware.</p> <p>14 Q. So there was no assessment on the impact of</p> <p>15 excluding student IDs on minority voters?</p> <p>16 A. I'm not aware of any analysis.</p> <p>17 Q. I believe you mentioned earlier the possibility</p> <p>18 of student IDs being forged because they're less secure.</p> <p>19 Was there any comparison done of the ability or the ease</p> <p>20 of forging student IDs versus other forms of accepted</p> <p>21 identification?</p> <p>22 A. I don't recall of specific studies, but I have</p> <p>23 some memory of floor debate or maybe even student IDs</p> <p>24 were held up as an example to show that, for example,</p> <p>25 there was no expiration date on them, that they didn't</p>
<p style="text-align: right;">274</p> <p>1 had been used for voting fraud anywhere in the country?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Was any analysis done of how many people used</p> <p>4 students IDs historically in elections to vote?</p> <p>5 A. Not that I recall. I know there was debate</p> <p>6 about the use of student IDs, and I can't remember if</p> <p>7 there was an analysis of what percentage of voters used</p> <p>8 those IDs. I know the document that was presented to me</p> <p>9 earlier estimated that something along the lines of 95</p> <p>10 percent of voters possessed a driver's license, but I</p> <p>11 don't know if there was similar analysis for student</p> <p>12 IDs.</p> <p>13 Q. So you're sitting here today, you're aware of</p> <p>14 no analysis that was done on the question of the number</p> <p>15 of -- the number of voters that had historically used --</p> <p>16 excuse me, that had historically used students IDs to</p> <p>17 vote, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And was there any discussion about the effect</p> <p>20 of excluding student IDs on voter -- on student voter</p> <p>21 turnout generally?</p> <p>22 A. Yes. There was debate on the floor about that</p> <p>23 issue, I recall.</p> <p>24 Q. And what was the nature of that debate on the</p> <p>25 floor?</p>	<p style="text-align: right;">276</p> <p>1 have, you know, backing bar codes or things that might</p> <p>2 indicate it was a formal identification. But I can't</p> <p>3 remember, specifically, studies that might have been</p> <p>4 done.</p> <p>5 Q. And did your office consider alternatives to</p> <p>6 banning the use of student IDs to address some of the</p> <p>7 problems that you've identified with their potential</p> <p>8 use?</p> <p>9 A. My memory is at different stages of the -- of</p> <p>10 similar legislation over multiple sessions, did have</p> <p>11 different forms of student ID. I think one was all</p> <p>12 student IDs. One was only government-issued student IDs</p> <p>13 in Texas. And I certainly considered it in my head as I</p> <p>14 was providing input on this legislation.</p> <p>15 Q. But presumably one alternative to banning the</p> <p>16 use of student IDs while also addressing the concerns</p> <p>17 you've addressed would be for the state to adopt</p> <p>18 guidelines or best practices with respect to</p> <p>19 university's issuance of students IDs, correct?</p> <p>20 A. That could have been done. I'm not sure if</p> <p>21 that would have been effective. And again, there's lot</p> <p>22 of potential alternatives that were not considered or</p> <p>23 adopted.</p> <p>24 Q. So that alternative was simply not considered?</p> <p>25 Is that your testimony?</p>

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<p style="text-align: right;">277</p> <p>1 A. I'm not aware that it was considered.</p> <p>2 Q. Were there any other specific alternatives</p> <p>3 considered to address some of the concerns with the</p> <p>4 secureness of student IDs that you've discussed as</p> <p>5 opposed to simply an outright ban on their use?</p> <p>6 A. I don't believe so. And for my own sake,</p> <p>7 again, I think the impression was that people who had</p> <p>8 student IDs also had some other form of official photo</p> <p>9 ID.</p> <p>10 Q. And what was the basis for that assumption?</p> <p>11 A. The entirety of testimony over multiple</p> <p>12 sessions.</p> <p>13 Q. Is there any specific testimony you can recall</p> <p>14 that addressed that subject?</p> <p>15 A. I can't recall specific testimony.</p> <p>16 Q. But it's your testimony you -- you may recall</p> <p>17 someone who testified that if you have a student ID,</p> <p>18 you're also likely to have other forms of acceptable ID?</p> <p>19 A. Again, I think, just today, I can't remember if</p> <p>20 this is jogging my memory or if it's what I've just</p> <p>21 learned today, but there was an estimate that 95 percent</p> <p>22 of voters have a driver's license. So that would</p> <p>23 confirm that, you know, to the extent students are</p> <p>24 voters, they also have a driver's license, at least in</p> <p>25 addition to whatever other CHL or passports or other</p>	<p style="text-align: right;">279</p> <p>1 With respect then to the issue of post</p> <p>2 Crawford, I believe the record already establishes that</p> <p>3 your office at least undertook no analysis of the number</p> <p>4 of registered voters in the state without an acceptable</p> <p>5 form of identification under SB 14; is that correct?</p> <p>6 A. I'm not aware of that analysis.</p> <p>7 Q. Do you think that analysis would have been</p> <p>8 helpful in assessing the burden standard that Crawford</p> <p>9 established?</p> <p>10 A. I think, again, for my own sake, I can't speak</p> <p>11 for anyone else, that the entirety of the testimony over</p> <p>12 multiple sessions showing the impact on voter turnout in</p> <p>13 other states with photo ID, including Indiana, as well</p> <p>14 as the absence of any individual who was unable to</p> <p>15 obtain an ID and brought that claim to court, and any</p> <p>16 other state with photo ID was indicative to me that it</p> <p>17 was not going to be an undue burden.</p> <p>18 Q. Okay. And in engaging in this analysis in the</p> <p>19 wake of Crawford, how did you define a permissible and</p> <p>20 an impermissible burden?</p> <p>21 A. I suppose, ultimately, about -- it was as an</p> <p>22 official manner, can the person obtain an identification</p> <p>23 and then what hurdles exist to get that identification,</p> <p>24 I'm not sure I can quantify it in any specific way.</p> <p>25 Q. Okay. Well, at several points in the</p>
<p style="text-align: right;">278</p> <p>1 forms of ID are acceptable.</p> <p>2 Q. And I believe we've already established that</p> <p>3 the Supreme Court's decision in Crawford was decided in</p> <p>4 2008. Does that sound about right?</p> <p>5 A. I think that's right.</p> <p>6 Q. And I believe you testified that you -- well, I</p> <p>7 shouldn't characterize your testimony. Did you pay</p> <p>8 close attention to Crawford after 2008?</p> <p>9 A. Yes.</p> <p>10 Q. And the attempt was, I believe as you put it,</p> <p>11 to attempt to make sure that Texas' photo voter ID law</p> <p>12 would comply with the boundaries established by the</p> <p>13 Supreme Court in Crawford; is that correct?</p> <p>14 A. I certainly hoped it would.</p> <p>15 Q. And would it be fair to say you did a</p> <p>16 comprehensive assessment of whether Texas' proposed</p> <p>17 photo ID laws complied with the Supreme Court's decision</p> <p>18 in Crawford?</p> <p>19 MS. HALPERN: Objection, vague.</p> <p>20 A. Yeah, I read Crawford. I've read the various</p> <p>21 stages of the bill and made assessments of whether it</p> <p>22 might be permissible under Crawford. But obviously,</p> <p>23 there's no way to know for sure until the court rules.</p> <p>24 Q. (By Mr. Dunbar) And was your analysis of</p> <p>25 Crawford an attempt to -- well, strike that.</p>	<p style="text-align: right;">280</p> <p>1 deposition today, I believe you said that you were</p> <p>2 looking at whether there would be any individual that</p> <p>3 would be unable to obtain a form of voter ID. Does that</p> <p>4 accurately summarize your testimony?</p> <p>5 A. That is one thing that I considered was the</p> <p>6 success of plaintiff's in other jurisdictions with photo</p> <p>7 ID requirements.</p> <p>8 Q. So the burden standard you applied in thinking</p> <p>9 about voter identification legislation in the wake of</p> <p>10 Crawford was whether the Texas law would leave any</p> <p>11 voters unable to obtain a form of ID?</p> <p>12 A. No, that's not the only thing I considered.</p> <p>13 Q. What else did you consider?</p> <p>14 A. Again, what other hurdles might -- what burdens</p> <p>15 might be put upon a person trying to obtain</p> <p>16 identification or cast a vote and do the measures laid</p> <p>17 out in various forms of this legislation address those</p> <p>18 burdens and/or outweigh those burdens?</p> <p>19 Q. Okay. And as a procedural matter, how did you</p> <p>20 go about attempting to identify the hurdles or burdens</p> <p>21 that an individual might face in attempting to get an</p> <p>22 EIC?</p> <p>23 A. To get an EIC?</p> <p>24 Q. Correct. To obtain an acceptable form of</p> <p>25 identification.</p>

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<p style="text-align: right;">281</p> <p>1 A. Just looking at the requirements of the 2 statute -- 3 MR. WHITLEY: I object to that question. 4 Are we talking about EICs or all the different forms of 5 identification on election day? 6 MR. DUNBAR: Well, I'm assuming that an 7 EIC is the lowest cost option, so I'm ask -- but I'll 8 ask the question generally. 9 Q. (By Mr. Dunbar) What you -- you've testified 10 or you've just testified that, in thinking about the 11 burden that the law would impose, you thought about the 12 hurdles that an individual might have to overcome in 13 order to obtain an acceptable form of ID. And I'm 14 asking, my question is -- and thank you for the 15 clarification. With respect to any of the acceptable 16 forms of ID, what process did you use to identify those 17 hurdles? 18 A. Again, I just looked at the requirements to 19 obtain the forms of identification. 20 Q. So you did no analysis of the actual location, 21 locations in the state that a voter would have to go to 22 get -- to acquire one of the acceptable forms of 23 identification? 24 A. I believe there was significant discussion 25 during the floor debate and the Committee of the Whole</p>	<p style="text-align: right;">283</p> <p>1 have offices located in them. There was discussion 2 about the operating hours of those offices that do 3 exist. There was discussion about the percentage of the 4 population that actually lives in these counties that 5 don't have offices and whether that is a significant 6 number of the population or not. And then there was a 7 discussion about what efforts going forward the 8 Secretary of State and DPS and other agencies might 9 undertake to -- to expand the access to identification. 10 Q. And again, though, you didn't -- in undertaking 11 this burden analysis in the wake of Crawford, you didn't 12 do an independent study or analyses of the number of 13 voters that would actually be affected by SB 14; is that 14 correct? 15 A. I did no independent analysis. 16 MS. HALPERN: Counsel, how much more do 17 you think you have? 18 MR. DUNBAR: 10 to 15 minutes probably. 19 MS. HALPERN: How much more time does he 20 have? 21 THE REPORTER: I have to go off the record 22 to compute. 23 (Off the record from 5:38 to 5:40 p.m.) 24 MR. DUNBAR: Back on the record. Can you 25 repeat the last question?</p>
<p style="text-align: right;">282</p> <p>1 about that topic. 2 Q. But your office's analysis in the wake of 3 Crawford in analyzing the burden issue, you didn't look 4 into that issue? 5 A. I don't think I did a separate analysis apart 6 from the hours of public testimony. 7 Q. And so I also take it that means you did no 8 analysis of the hours of operation in the various DPS 9 locations; is that correct? 10 A. I did not do any independent analysis apart 11 from the hours of testimony, correct. 12 Q. And you would agree, wouldn't you, that those 13 factors would be relevant to an assessment of the burden 14 required with achieving an acceptable form of 15 identification? 16 A. They are relevant. And again, I feel like they 17 were adequately addressed in the hours of testimony on 18 this bill over multiple sessions. 19 Q. In any of those hours of testimony, do you 20 recall any quantification that was done with respect to 21 identifying the burdens of acquiring an acceptable form 22 of identification? 23 A. Sure. I mean, I know there was -- and again, 24 it was presented to me in an exhibit today, there was a 25 specific number of counties that did not at the time</p>	<p style="text-align: right;">284</p> <p>1 (Requested portion read by the court 2 reporter.) 3 Q. (By Mr. Dunbar) And would there be any answer 4 to that analysis that would change your view of whether 5 SB 14 imposes an undue burden on the exercise of voting 6 rights? 7 MS. HALPERN: Objection, calls for a legal 8 conclusion. 9 Q. (By Mr. Dunbar) Go ahead, sir. 10 A. So if an analysis showed that a significant 11 number of students do not have one of the acceptable 12 forms of ID, including a driver's license, and could not 13 obtain one of those forms of identification, then, 14 possibly, that would make me second-guess my conclusion. 15 Q. My question was a slightly more basic one, 16 which is: If, hypothetically, you had undertaken the 17 analysis of the number of registered voters without an 18 acceptable form of ID and it turned out to, say, be 20 19 percent of the registered voter population, would you 20 find that significant or relevant to the burden 21 analysis? 22 A. Possibly. 23 Q. But it wouldn't change your view of 24 permissibility of SB 14? 25 A. It would depend on the exact nature of that</p>

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<p style="text-align: right;">285</p> <p>1 finding, I suppose.</p> <p>2 Q. And would there be any level of racial</p> <p>3 disparity with respect to the effect of SB 14 that would</p> <p>4 have been -- that would have changed your analysis of</p> <p>5 the burden imposed by the law?</p> <p>6 A. Repeat that question.</p> <p>7 Q. Sure. Would there be any level of racial</p> <p>8 disparate effect resulting from SB 14 that would have</p> <p>9 changed your assessment of whether SB 14 was permissible</p> <p>10 under Crawford?</p> <p>11 A. It's possible. I'd like to think any new</p> <p>12 information could change my calculation.</p> <p>13 Q. Okay.</p> <p>14 A. And again, all evidence that -- the weight of</p> <p>15 the evidence that I had observed over multiple sessions</p> <p>16 indicated that it would not be a particular burden to a</p> <p>17 particular constituency.</p> <p>18 Q. And that was largely based on -- well, strike</p> <p>19 that.</p> <p>20 That was based entirely on the studies</p> <p>21 you've referenced from other states suggesting there was</p> <p>22 no turnout drop in the wake of the enactment of photo ID</p> <p>23 laws; is that correct?</p> <p>24 A. No, it was also based on the multiple witnesses</p> <p>25 by supporters and opponents of the bill over three or</p>	<p style="text-align: right;">287</p> <p>1 A. I've heard people suggest lots of things, that</p> <p>2 it would help a particular party, that certain people</p> <p>3 would benefit from fund raising by opposing the bill.</p> <p>4 I've heard lots of things. That doesn't mean they're</p> <p>5 correct. And I can't get in the mind of any individual</p> <p>6 senator to know why they support or why their party</p> <p>7 supports or opposes a bill.</p> <p>8 Q. In any private conversations that your office</p> <p>9 had with Texas legislatures, was the -- a potential</p> <p>10 partisan advantage from SB 14 discussed?</p> <p>11 A. The meetings I had, was a partisan advantage</p> <p>12 discussed?</p> <p>13 Q. If the potential that SB 14 would benefit the</p> <p>14 Republican party?</p> <p>15 A. No.</p> <p>16 Q. That was never discussed in any meeting?</p> <p>17 A. No.</p> <p>18 Q. You mentioned election identification</p> <p>19 certificates and mobile EIC stations as a part of an</p> <p>20 implementation effort that in your view has helped make</p> <p>21 SB 14 effective; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. And this was in response to, I believe, some</p> <p>24 questions from a constituency group that you discussed</p> <p>25 with Ms. Westfall, you made inquiries to DPS, right?</p>
<p style="text-align: right;">286</p> <p>1 four legislative sessions, as well as committee</p> <p>2 testimony, as well as debate on the House floor and</p> <p>3 Senate floor during that time.</p> <p>4 Q. And how did that debate or testimony convince</p> <p>5 you that SB 14 would not have a racially disparate</p> <p>6 impact?</p> <p>7 A. I just -- I saw no convincing argument or</p> <p>8 evidence that it would. And neither did the minority</p> <p>9 members of the House that voted for the bill or anybody</p> <p>10 else who voted for the bill, which passed in both</p> <p>11 chambers.</p> <p>12 Q. And I believe you've mentioned a few times that</p> <p>13 SB 14 was contentious and resulted in this extreme</p> <p>14 partisan split; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And --</p> <p>17 A. I don't know if I used the word extreme, but</p> <p>18 there was a partisan fight, yes.</p> <p>19 Q. What would you -- how would you explain the</p> <p>20 deep partisan divide over the issue?</p> <p>21 A. I don't know. I don't know that I can.</p> <p>22 Q. You -- you're -- all of your time working on</p> <p>23 photo voter identification laws, you've never heard</p> <p>24 anyone suggest that such laws might help a particular</p> <p>25 party?</p>	<p style="text-align: right;">288</p> <p>1 A. Correct.</p> <p>2 Q. And are you aware or as a part of that</p> <p>3 analysis, I should say, did you ask questions about the</p> <p>4 location of the mobile EIC stations or their hours of</p> <p>5 operation?</p> <p>6 A. I can't recall. And I know some of my</p> <p>7 information came from news accounts on the subject, and</p> <p>8 I can't recall right now where those were located or</p> <p>9 directed.</p> <p>10 Q. So you did ask specific questions about the</p> <p>11 hours of operations of the mobile EIC units?</p> <p>12 A. I don't know that I asked specific questions of</p> <p>13 DPS. I may have. And again, I know I've read news</p> <p>14 accounts of extended hours and so forth.</p> <p>15 Q. Would it surprise you if someone from DPS took</p> <p>16 the position that it would be most convenient for those</p> <p>17 needing to get election identification certificates to</p> <p>18 be open only during 9 to 5 business hours?</p> <p>19 A. Would it surprise me if DPS said it's most</p> <p>20 convenient to do it from 9 to 5?</p> <p>21 Q. Yes.</p> <p>22 A. I would defer to their judgment, I suppose, on</p> <p>23 what hours are most effective for operating their</p> <p>24 offices.</p> <p>25 MR. DUNBAR: That's all I have.</p>

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<p style="text-align: right;">289</p> <p>1 MS. WESTFALL: Okay. We are going to keep 2 this deposition open pending any motion to compel 3 responses to testimony for which you were ordered and 4 instructed by your counsel not to answer on the basis of 5 legislative privilege, deliberative process privilege, 6 or attorney-client privilege. 7 MS. HALPERN: Are you planning on filing 8 such motions? 9 MS. WESTFALL: We will certainly take that 10 under consideration. I need to consult with my counsel. 11 MS. HALPERN: Okay. 12 MS. WESTFALL: Thank you for your time 13 today. 14 (Discussion off the record from 5:46 to 15 5:50 p.m., where it was agreed to designate the entire 16 transcript as highly confidential.) 17 MS. HALPERN: I want to put on the record 18 that we are reserving the right to read and sign. You 19 can e-mail me the original for signature. 20 (Deposition concluded at 5:51 p.m.) 21 22 23 24 25</p>	<p style="text-align: right;">291</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 CORPUS CHRISTI DIVISION 4 MARC VEASEY, et al.,) 5) 6 Plaintiff,) 7) 8 VS.) CIVIL ACTION NUMBER: 9) 2:13-CV-193 (NGR) 10 RICK PERRY, et al.,) 11) 12 Defendants.) 13) 14 UNITED STATES OF AMERICA,) 15) 16 Plaintiff,) 17) 18 VS.) CIVIL ACTION NUMBER: 19) 2:13-CV-263 (NGR) 20 TEXAS LEAGUE OF YOUNG VOTERS) 21 EDUCATION FUND, et al.,) 22) 23 Plaintiff-Intervenor,) 24) 25 TEXAS ASSOCIATION OF HISPANIC) COUNTY JUDGES AND COUNTY) COMMISSIONERS, et al.,) Plaintiff-Intervenor,) VS.) STATE OF TEXAS, et al.,) Defendants.) TEXAS STATE CONFERENCE OF) NAACP BRANCHES, et al.,) Plaintiffs,) VS.) CIVIL ACTION NUMBER: NANDITA BERRY, et al.,) Defendants.)</p>
<p style="text-align: right;">290</p> <p>1 CHANGES AND SIGNATURE 2 RE: VEASEY, ET AL. VS. PERRY, ET AL. 3 PAGE LINE CHANGE REASON 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 I, BRYAN HEBERT, have read the foregoing deposition 21 and hereby affix my signature that same is true and 22 correct, except as noted above. 23 _____ 24 BRYAN HEBERT 25</p>	<p style="text-align: right;">292</p> <p>1 BELINDA ORTIZ, et al.,) 2) 3 Plaintiffs,) 4) 5 VS.) CIVIL ACTION NUMBER: 6) 2:13-CV-348(NGR) 7 STATE OF TEXAS, et al.,) 8) 9 Defendants.) 10) 11 REPORTER'S CERTIFICATION 12 DEPOSITION OF BRYAN HEBERT 13 JUNE 17, 2014 14 I, Chris Carpenter, Certified Shorthand Reporter in 15 and for the State of Texas, hereby certify to the 16 following: 17 That the witness, BRYAN HEBERT, was duly sworn by 18 the officer and that the transcript of the oral 19 deposition is a true record of the testimony given by 20 the witness; 21 That the deposition transcript was submitted on the 22 _____ day of _____, 2014, to the witness or to the 23 attorney for the witness for examination, signature and 24 return to _____, 25 by _____, 2014, and if returned, the original transcript will forwarded to Elizabeth Westfall, the custodial attorney; That the amount of time used by each party at the deposition is as follows: Ms. Westfall: 5 hours, 54 minutes</p>

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1 Mr. Dunbar: 42 minutes
2 I further certify that I am neither counsel for,
3 related to, nor employed by any of the parties or
4 attorneys in the action in which this proceeding was
5 taken, and further that I am not financially or
6 otherwise interested in the outcome of the action.
7 Certified to by me this 17th of June, 2014

8
9
10 



11 Chris Carpenter, Texas CSR 1151
12 Expiration Date: 12/31/2014
13 701 Brazos, Suite 380
14 Austin, TX 78701
15 (512)292-4249

16 Firm Registration No. 344
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